

(1958) 04 MAD CK 0033
In the Madras High Court

Vyapuri Moopan

APPELLANT

Vs

Sethurama Iyer and Another

RESPONDENT

Date of Decision : 03-04-1958

Acts Referred:

Citation : (1958) ILR (Mad) 1073 : (1959) 72 LW 47 : (1958) 2 MLJ 519

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Judgement

Panchapakesa Ayyar, J.—These are two connected appeals against the judgment and decree of Rajagopala Ayyangar, J., in Writ Petitions

Nos. 1095 and 724 of 1956 before him. The petitions were filed by the landlords, Sethurama Iyer and Rajammal, for quashing the orders of the

Revenue Court directing them to restore possession of certain lands to some mattuvaramdars Vayyapuri and Shanmugham, the respondents herein.

The judgment of Rajagopala Ayyangar, J., discussed the cases of mattuvaramdars and kaieruvaramdars who claimed to be cultivating tenants who

had cultivated lands for the agriculture year 1953 54 and therefore claimed to be entitled to restoration to possession as they satisfied the

requirements of Madras Act XXV of 1955 and whose claims was allowed by the Revenue Court. Rajagopala Ayyangar, J., after elaborately

discussing the evidence, and the various qualifications required before making a person a "cultivating tenant" within the meaning of Act XXV of

1955 (and the succeeding Acts XIV and XXIV of 1956) held that these mattuvaramdars and kaieruwaramdars were not "cultivating tenants"

within the meaning of Act XXV of 1955 or Act XIV of 1956, where the very same qualifications were set out. The main grounds relied on by him

were that they had no possession or custody of the land and had no tenancy agreement, express or implied with the landlord, and had not also

taken part in the entire cultivation of the crop, but only one part of it, and were also not paying any rent to the landlord, but were, on the other

hand, paid by the landlord for their services certain marakkals (usually two marakkals) in every kalam of the net crop raised on the land, and in

case of failure of crops, which had never occurred within living memory, some minimum wages left to the discretion of the landlord. So, he allowed

the writ petitions and set aside the order for restoration passed by the Revenue Court, but directed all the parties to bear their own costs.

2. Dissatisfied with that order, these two writ appeals have been filed for setting aside that order, and restoring the order of the Revenue Authority,

on the ground that mattuvaramdars and kaieruvaramdars are "cultivating tenants" within the meaning of the Act and are entitled to restoration of

possession. We may add, incidentally, that after the judgment of Rajagopala Ayyangar, J., in the writ petitions, an Ordinance was issued by the

Governor of Madras, when the Assembly was not in session, stating that mattuvaramdars and kaieruvaramdars should be deemed to be "

cultivating tenants " within the meaning of the Act, and several writs, dismissed yesterday for non-prosecution were filed questioning the validity of

that Ordinance and several C.M.Ps. in the writs for injunction, etc. That Ordinance lapsed and was not substituted by an Act or even a Bill, in the

Assembly. It is for that reason that the petitioners who filed the writs did not prosecute them and get them and the connected petitions for

injunction, etc., dismissed yesterday.

3. So, now, we are left only with the definition of a "cultivating tenant" in the Act and the correctness of Rajagopala Ayyangar, J.'s holding that

mattuvaramdars and kaieruvaramdars are not "cultivating tenants " within the meaning of the Act. The principal incident of a mattuvaram from

which the mattuvaramdar takes his name, is that the mattuvaramdar uses his own bulls (madu) for ploughing the landowners " lands. The

kaieruvaramdar on the other hand, uses only his own hand (Kai) and is supplied the bulls by the landlord. In other words, the kaieruvaramdar is "" a

farm hand "" supplied with the ploughing bulls by the landlord, just as some other farm hands will be supplied by him with spades, pick-axes and

other agricultural implements (including nowadays tractors and harvesting machines and bull-dozers) necessary for the work to be done on the lands. The mattuvaramdar is paid from two marakkals upwards, as agreed on or as the custom of the locality dictates, in every kalam of the net crops realised from the land. As the mafm-varamdar is generally a poor person, he will be paid an advance said to be a kalam per month for his maintenance which will be deducted from the sum due to him from the net harvest. If the crops are an entire failure, which had never been the case within human memory in the suit locality, situated in the Cauveri delta, still the mattuvaramdar will be paid some wages at the discretion of the landlord. It is said that usually the landlord will not recover the advance of one kafam per month given to him for the two months of the ploughing season. A kaieruvaramdar will admittedly be paid his wages whether the crops fail or not. It will be noticed that while the service of both the mattuvaramdar and kaieruvaramdar are paid for in kind and in a certain proportion of the actual net crop realised from the land to which they have contributed their labour that percentage in kind is only a substitute for money or cash just as in past days even priests, kavalgars, astrologers, washermen" and barbers and various other persons were paid in kind, viz., some percentage of the net crops.

4. We shall first take up the definition of a "cultivating tenant". As per Act XXV of 1955 (and the later Acts, Act XIV of 1956 and Act XXIV of 1956) a "cultivating tenant" means a person who contributes his own physical labour or that of the members of his family in the cultivation of any land belonging to another under a tenancy agreement, express or implied, and includes any such person who continues in possession of the land after the determination of the tenancy agreement or the heirs of such person, but shall not include a mere intermediary or his heirs. We shall now consider whether a kaieruvaramdar or a mattuvaramdar will come under the above definition.

5. We shall first take up the case of a kaieruvaramdar. The learned Counsel for the appellants did not adduce arguments to show that even that man would be a "cultivating tenant" as defined above. They said that they were only concerned with the mattuvaramdar in these appeals, the kaieruvaramdars in the other writs, not having appealed. But we think we had better deal with the case of the kaieruvaramdar also especially as in

certain parts of the evidence the same person has claimed to be both mattuvaramdar and pallavaramdar, which is the same as kaieruvaramdar, the pallars being the caste contributing most to the farm labour on the lands in this locality. A kaieruvaramdar is, in our opinion, certainly not a cultivating tenant, as defined above, but is only a farm hand or cooly, who is paid fixed wages, though in kind and as a percentage of the net crops, for his labour. In these cases, there is evidence to show that he is paid his wages even when the crops fail. It is also clear that the kaieruvaramdar does not normally and of necessity continue to work on the land beyond the ploughing season, which extends for only about two months, and does not cover the whole of the period required for a crop, even the short term crop taking about three months, and the long term, say sambha crops, taking six months. Nor is this kaieruvaramdar ever in possession, or even custody of the land for the entire period the crop is growing. Nor has he any tenancy agreement with the landlord, express or implied. He has no tenancy, by conduct or oral or written enforceable in law. Nor is there any question of evicting him, as he was never in possession. Nor does he pay rent to the landlord, one of the essential characteristics of a tenancy. On the other hand, he is paid his wages by the landlord, and pays nothing to the landlord. The mere fact that he is called kaieruvaramdar will not be of any avail. So too, Hemingway's calling mattuvaramdars varamdars relied on by the learned Advocate-General. All kinds of people are called varamdars in the countryside, though many of them are certainly not cultivating tenants. Thus in the evidence in these cases, we find that there are not only kaieruvaramdars and" mattuvaramdars but also tennirkattuvaramdars (irrigation coolies) and Kavalvaramdars (watchman) mere coolies Alavoram let alone harvest coolies, threshing coolies, etc., who are all paid certain amounts in kind for their services, but who are never in possession or even custody of the land, and are never tenants with any tenancy agreement in their favour. The word " waram " is loosely applied to all of them as to the regular waram tenants having normal possession and full custody of the land, and a tenancy agreement, and paying waram or guttagai and constitute ""cultivating tenants "" just as the word marriage or vivaha is applied even to phul marriage and phul vivaha not recognised by the law, and the word putra is applied to an abhimana-putra, who is not in law a son or entitled to any inheritance.

6. As has been remarked by Baden-Powell, Kellcher, Hemingway and Meek in India and flther ancient countries, primitive customs, dating from an immemorial period, have continued even during the civilised period, and have peculiar characteristics of their own, not found in any other country and it will be wrong to apply the strict English terms by a " mischievous fiction " (see Vein Goundan v. Kamara Velu Goundan I.L.R. (1886) Mad. 289 : 7 M.L.J. 30 and Lakshmanan v. Venkateswaralu (1949) 2 M.L.J. 500 relied on by the learned Advocate-General) or even the strict definitions of a tenancy in Indian Laws, like the Transfer of Property Act, to such cases. The Indian ryot represents an independent idea, and is a characteristic and peculiar product of India having no counterpart in any other part of the world. The learned Advocate-General urged that the Privy Council ruling in Lakshmanan v. Venkateswaralu², which has held that it will be wrong and mischievous to apply strict English notions of exclusive possession and other peculiar incidents of English tenancy law to Indian customary tenancies and warams, and that recent legislation has tended to enlarge the rights of tenants and even mere tillers, and changed the old law. We are of opinion that the term "waram" is loosely used in the country parts for any customary or mamool system, and without any reference to whether the waramdars falling under a particular waram would constitute ""cultivating tenants or not. The fact whether they are "" cultivating tenants "" has to be determined by scrutinising the incidents of each of the warams and seeing whether they satisfy the requirements of the statute. Some waramdars well-known to law and undoubtedly tenants having tenancy agreements, and paying waram or guttagai will certainly be " cultivating tenants" provided they contribute the physical labour of themselves or the members of their family to the cultivation. It will be a mistake to think that waram was an introduction of the British Government or of the English system of revenue administration introduced by them. Even ancient Hindu law-givers and ministers like Chanakya or Kautilya were not unacquainted with such division of the produce. The usual rule in those ancient days was that one-sixth of the produce should go to the King as tax, one-third to the landlords, immediate and intermediate and one-half to the tiller of the soil by which term was understood the person who took the risk of gain or loss of the crop, even though he may be simply supervising the cultivation by hired labourers of his own, supplying the

seed and bulls and bearing the entire cost of cultivation. The requirement of contribution of the physical labour of the tenant or members of his family is a new requirement of the statutes. As the learned Advocate-General urged, there have been classes in India like kings, nobles, zamindars, Brahmins, Vysyas, and other people imitating them, who never wanted to get their hand to the plough, except ceremonially at sacrifices and who always had their land cultivated almost entirely with the physical labour of others. These classes used to describe their occupation as "living comfortably" (sukhajivitam) and it was the ambition of the poor classes to get into their ranks as time and opportunity came. But the mere fact that these classes were mostly owners would not, and did not, prevent even the prosperous tenants from following their footsteps and never taking any part in or contributing any physical labour to the cultivation of the lands. In such cases, those people also became secondary landlords of a kind and would not be "cultivating tenants". The learned Advocate-General said that there were only two possibilities, either landlords, real or constructive, or farm labourers, pure and simple, and that there can be no third class. He was unable to prove his point. When asked how he would classify persons who contribute some physical labour towards the cultivation, on a contractual or customary basis, and get paid for the services in cash or in kind, his answer was that they would not be landlords or cultivating tenants but simply farm hands or at best contractors. We are afraid that the mattuvaramdar may come in this middle category, though the kaieruvaramdar will come in the category of mere farm labour. He cannot be called a contractor in the sense of a man who contracts to manure the field either with chemical manure or with the manure of sheep and goats. But it is clear that the kaieruvaramdar will certainly not be a "cultivating tenant" and that Rajagopala Ayyangar, J., was right in holding like that in his combined judgment in these writs and we confirm his finding in that respect.

7. Now we come to the mattuvaramdar. The mattuvaramdar differs from the kaieruvaramdar only in one respect, viz., that he supplied the bulls for the ploughing, like a woodcutter bringing his own axe for the chopping of wood. For this extra service, the evidence shows that he is paid one marakkal per kalam of the net produce. The kaieruvaramdar was getting one marakkal per kalam but the mattuvaramdar two marak kah per

kalam. Even the, mattuvaramdar does not take part as mattuvaramdar in the entire agricultural operations relating to the crop. He simply takes

part at the ploughing, which occupies some 20 days in two months out of the three months minimum required for a short crop and even six months

for samba and other longterm crops. No doubt, he may also take part in the transplanting, watering, weeding, harvest, threshing and other

operations. But the evidence shows that they are all separate operations with which he, as mattuvaramdar, has no concern, and in which he is

engaged as an independent labourer for an independent remuneration. So that cannot make him very different from the kaieruvaramdar regarding the

question of cultivating tenant. We do not, however, express any opinion as to what the case will be if a person is taking part in the entire operations

the year in 7th field, or even regarding one crop, and is getting a certain percentage of the net outturn of that crop in every operation of which he

has contributed his physical labour or that of the members of his family under a customary tenure system. This is not the case here. The

mattuvaramdar like the kaieruvaramdar has no complete possession or custody and has no tenancy agreement, express or implied, by conduct,

oral, or in writing, with the landlord. Nor does he pay any rent to the landlord. He receives from the landlord instead. Nor is there any question of

his being evicted as he was never in complete possession.

8. The learned Advocate-General instances the case of a tenancy in Ceylon noted by Meek, in his Land law and Custom in the Colonies where

the landlord supplies one buffalo and half the manure to the tenant and gets half the net outturn. But that illustration has no relevancy to the question

here. The landlord of course is the owner, and his supply of the single buffalo and half the manure is not for the cultivation of any land belonging to

another, an essential incident required in the case of a "cultivating tenant". We have also no doubt that the landlord in Ceylon does so in order to get his full

50 per cent, of the produce. It is significant that he supplies one of the two buffaloes required for ploughing, and half the total manure required for manuring.

9. The learned Advocate-General urged that, in any event, Rajagopala Ayyangar J., was not correct in stating that a tenant should have exclusive

possession of the land, without any right left in the landlord to enter on the land

during the period of tenancy applying the English rule, and urged further that a "cultivate tenant" need not even satisfy all the conditions prescribed even in the Transfer of Property Act for a tenant. He instanced how many landlords want to enter on the land during the currency of the tenancy just to assert their right of ownership or to see that the land is properly kept and cultivated, just as a landlord may enter the house rented by him now and then, by agreement, during the currency of the lease to get that the house is kept and used properly. We are of opinion that, in this case where we have to construe the phrase cultivating tenant we should confine our level to the definition of that phrase in the three Acts mentioned above, and I need not go beyond those Acts and definitions to English concepts of tenancy, or even to the strict incidents of tenancy under the Transfer of Property Act. It may be an innocent pleasure for the landlord to walk across the fields rented out by him and see the green crops growing, and such an act, by agreement, may not take away anything from the cultivating tenant's rights under the above Acts. So long the cultivating tenant has full custody of the land and real effective possession of it for the period of the tenancy, these little acts of the landlord, like going on the land to watch the crops or to see the state of the lands, will not affect it. So too the landlord's prescribing that on his rice-fields ragi should not be grown or on his sugarcane fields hemp should not be grown, or that bone-manure or any other manure he objects to should not be used, if covered by express contract will not take away the cultivating tenant's status for that reason. But, as already stated even applying the very definition of a "cultivating tenant" under the above three Acts, which are conceded to be correct by both sides, even the mattuvaramdar will not be a "cultivating tenant". We have therefore, no hesitation in confirming Rajagopala Ayyangar's judgment to that effect.

10. In the end, these appeals deserve to be and are hereby dismissed with the cost of the contesting respondents (Sethurama Iyer and Rajammal).

11. Advocate's fee Rs. 100 in each appeal.

Basheer Ahmed Sayeed, J.

12. I agree with my learned brother. I wish only to add a few observations of my own.

13. The learned Advocate-General has argued that ever since the Madras Estates

Land Act was enacted, the trend of legislation has been towards the progressive adoption and implementation of the principles of assuring the person cultivating the land, if he is other than the land-owner, fixity of tenure and fair rent for him. He argued further that the question that arises for consideration in these two appeals should be viewed and determined in the light of this background. In my view, there can be no controversy in regard to the persistent attempt on the part of the Legislature to ensure that the land should belong to the one who tills or cultivates it. The laws enacted for the abolition of the zamindari estates in the State of Madras and the conversion of those estates into ryotwari tenure lands is a big step in this direction. The various enactments that have since been passed, during the last decade or so, to assure non-eviction of tenants cultivating lands of others, to secure fixity of tenure and of fair rent, and to prevent intermediaries securing any rights in themselves as against the actual cultivators of the land, do serve as pointers to the system of tenure that is being evolved at present in favour of the cultivating tenants. When this process of eliminating this class of non-cultivating land-owners in the ryotwari tenancy areas will reach its finalisation is rather too difficult to predict. But the Advocate-General is, however, optimistic enough to think that this process may reach its completion within the next 10 or 15 years, depending upon the speed of the legislation in the State. Whatever might be the object of the legislation that has been enacted during the last decade or more, the question that arises for consideration in these two appeals before us is whether the existing legislation has achieved the intended purpose in the case of the appellants who claim to be mattuvaramdars and kaieruvaramdars.

14. We have been taken through the various provisions of the law that are relevant for the purpose of investigation and determination of the question as to whether these mattuvaramdars and kaieruvaramdars comply with the terms of the enactments which regulate the relationship between the landlord and tenant in order to enable the tenants to secure the benefit of fixity of tenure and fair rent. My learned brother has considered in detail as to what exactly is the scope of the various Acts that have been placed before us in the course of the arguments by the learned Advocate-General and the learned Counsel on the other side. Taking a

comprehensive view of the entire enactments, wherein the definition of the term "cultivating tenant" and the incidents that should attach to a cultivating tenant in relation to the landlord, and the payment of rent, etc., are contained, it is clear, that mattuvaramdar or kaieruvaramdar can never come within the scope of the definition contained in these various enactments. The incidents that attach to a cultivating tenant have been very succinctly and definitely laid down in these various Acts that have been brought to our notice, and we do not find that the mattuvaramdar or the kaieruvaramdar to any extent satisfy the requirements of a cultivating tenant in relation to the owner of the land. A cultivating tenant is required to be in possession of land, though not in exclusive possession, the terms being used in no technical sense. He has to pay rent, and he has to do so under a tenancy agreement, whether express or implied. He is also liable to be evicted by the landlord for non-payment of rent when he falls in arrears. He has to cultivate the land in every sense of the term. A lease deed is also contemplated to be executed under some of the provisions that obtain in the several Acts. On the evidence that has been placed before us and which has been analysed for the Court by one of the learned Counsel for the appellants, it is difficult to bring even the mattuvaramdar, who ploughs the land with his own bulls and plough, leave alone the kaieruvaramdar, "who does not even bring his bulls or plough, for the purpose of ploughing the land which is required to be done for the purpose of raising the crop, within the definition of a "cultivating tenant". The evidence proves this much, viz., that in the long series of cultivating operations, what the mattuvaramdar does is a small part, that is, ploughing the land, and if the mattuvaramdar does it with his own bulls and plough, the kaieruvaramdar does it with the plough and bulls belonging to the owner of the land. Cultivation does not mean mere ploughing, nor could a cultivating tenant mean a person who merely ploughs the land for the purpose of cultivation. There appears to be no continuity either in the service rendered by the mattuvaramdars or the kaieruvaramdar in respect of these operations which constitute cultivation of the land and which are required to raise crops in order to entitle either of them to claim a share of the produce. The entire evidence when sifted, as has already been done in the typed papers supplied by the learned Counsel for the appellants, goes only to show that at

best the mattuvaramdar or the kaieruvaramdar is nothing more than a person who merely lends his services, the same being a small part of the series of operations required for the purpose of raising crops on the land belonging to the owner. It is, therefore, difficult to come to the conclusion on the basis of the evidence or on an interpretation of the terms used in the various recent enactments governing the relationship between the landlord and tenant that even the mattuvaramdar could ever be a cultivating tenant. There is no question of the mattuvaramdar remaining on the land which is an essential condition attaching to a cultivating tenant, after he has done the operations. All that he does is merely to take his bulls, perhaps his own plough or the plough supplied by the landlord, and plough the land and do nothing more. If he does anything more, he does it purely in his capacity as a labourer for which wages are paid then and there according to the kind and value of services rendered by him. This is also in evidence. The position of the kaieruvaramdar, as has been pointed out by my learned brother, is far worse than that of the mattuvaramdar in the light of the various provisions of the enactments which refer to the incidents of a cultivating tenant and the evidence on record. For the production of crop on the land, a mattuvaramdar, if he could really be considered a tenant under the landlord and entitled to the various benefits that are being conferred upon such a tenant by the series of legislation that has been passed during the last decade or so, should be something more than what he claims to be as per his own evidence in this case. It is also significant that in the case of mattuvaramdars the period of tenancy is not fixed and not specific. It is as vague as it could be. He is not in possession of the land. He has no control over the cultivation or the period of cultivation or even the process of cultivation. The produce of the land ploughed by him is not liable to be attached for his debts. All the evidence on this aspect of the case goes to show that he is nothing more than a person whose services for ploughing the land are remunerated by way of certain share of the produce if produced. But if no produce is produced after he has contributed to the ploughing operations, the evidence is that he retains what has already been paid to him or what the landlord would pay in his discretion, if there is failure of crops after the mattuvaramdar has ploughed the land. Such a person could hardly be considered to be a tenant entitled to possession of the land and also to control the operations on the land.

The evidence has clearly shown that even the sowing of the seeds, weeding, watering of the lands, and the threshing of the grains, all those operations are done by the landlord and not by the tenant. The mattuvaramdar claims a share of the produce for his having ploughed the land at the earliest stage of the cultivation operations.

15. My learned brother has dealt with the question of exclusive possession which has been referred to by Rajagopala Ayyangar, J., in the order

appealed against, and I do not think that I need traverse that ground, though I am of opinion that possession as between the landlord and the tenant

is a vital incident which would go to determine whether the holder of the land or the one who is in custody is a tenant or not. So far as the

landowner is concerned, the possession of the tenant is that of the landowner, but as against the rest of the world the possession of the tenant must

be exclusively his own. The mattuvaramdar does not have any such possession.

16. In the present case so far as the mattuvaramdar is concerned, he absolutely does not seem to have any possession of the land whatsoever and

he is not called upon to pay any rent either, as a tenant of the land. He has only to get a share of the produce at the most for the service of

ploughing which he renders and that too if and when the landlord chooses to call him to render such services. There is no evidence to show that the

mattuvaramdar who gets waram for his madu or bulls, is entitled as of right to be called from year to year to plough the lands. It is not shown either

that the landlord is prevented from requisitioning the services of other persons to lend their ploughs and bulls and do the ploughing operations on

the land of the landlord if and when he so desires.

17. In these circumstances, I am of the same opinion as my learned brother that neither the terms of the enactment relied on by both sides and that

have come up for consideration before us, nor the facts of the case before us would warrant the inference that the mattuvaramdar or the

kaieruvaramdar is a cultivating tenant. I would agree with my learned brother that the appeals should be dismissed with costs.