

(1928) 04 MAD CK 0052
In the Madras High Court

Yelamarty Ramanna and Others

APPELLANT

Vs

Sobhanadri Appa Rao and Others

RESPONDENT

Date of Decision : 11-04-1928

Acts Referred:

Citation : AIR 1929 Mad 75

Hon'ble Judges : Reilly, J;Kumaraswami Sastri, J

Bench : Full Bench

Judgement

Kumaraswami Sastri, J.—These appeals arise out of suits filed by the plaintiff zamindar against the defendants tenants under the Estates Land Act for a decree directing the defendants to accept the patta tendered by him and to execute a corresponding muchilika containing the stipulations mentioned in the patta. Suits were also filed to recover rent. The case for the plaintiff is that a proper patta was prepared in respect of the land specified in the plaint according to the practice obtaining in the estate and that the defendants declined to accept it and to execute a corresponding muchilika.

2. The defendants filed a written statement stating that the patta was not prepared according to the practice obtaining in the estate or in the village, that the patta was not tendered to them, that neither the stipulations contained in the plaint patta, nor the cist amounts, nor the extents of the lands are correct, that the cist payable to the plaintiff in respect of the suit lands was correctly stated in the muchilikas previously executed and given by the defendants and their ancestors and that the stipulation for higher rent is not valid. They also raise other minor defences which it is not necessary to consider here as the only point argued by the appellant before us is the right of the landlord to claim a higher rent. The contention of the plaintiff before the Revenue Divisional Officer who tried the suits was that the rates already fixed on the suit lands were far too low when compared with the rates now existing on lands of similar nature and quality in the neighbourhood and that he was entitled to claim a higher rent u/s 26 (3), Estates Land Act. The defendants' case was that what the plaintiff really wanted

was an enhancement of the rent, that Section 26 (3) did not apply and that the proper remedy was to apply to the Collector u/s 30 for enhancement.

3. The Revenue Divisional Officer held from a perusal of the Adangal, and amarakam accounts (Exs. G and C series) that the rates of rent prevailing on the surrounding dry lands were Rs. 0-13-0; Rs. 1-3-0; Rs. 1-4-0 and Rs. 1-10-0, whereas the rates of rent hitherto borne by the suit lands ranged from Rs 0-5-0 to Rs. 0-10-0, that no special inferiority in the soil of the suit lands had been made out by the defendants while the evidence on the plaintiff's side showed that they were of the same nature and quality as the lands in the neighbourhood, that the contention of the defendants that the rates already borne by the suit lands were normal and reasonable rates were not made out and that the case fell u/s 26 (3) and not u/s 30. He held that the plaintiff was entitled to recover enhanced rent for faslis subsequent to fasli 1329. He also held that the terms in the pattas tendered were such as were usually entered and that they were not open to any objection. On appeal the District Judge was of opinion that in this estate specially low rates of rent were charged when lands were let for grazing purposes, that the amarakam and adangal accounts for the years 1886 to 1888 showed that the village holdings were classified as maraka-sagu (dry cultivation) and banjar lands and that the lands in suit were included in banjar class. The learned Judge observes:

In view of the designation of these lands and of the specially low rates appertaining to them, there seems no doubt that they were appropriated to a peculiar purpose, and that the plaintiff's contention is true that they were reserved as grazing lands at a time when the pressure on the land for cultivation was not so great as it is now.

4. He also states that it was not denied before him that the rates of rent now payable were lower than the lawful rates payable upon lands of similar description and with similar advantages in the neighbourhood.

5. Before dealing with the contentions raised it is necessary to refer to the prior litigation between the parties. In 1910 a batch of suits was filed u/s 56, Estates Land Act, to enforce the acceptance of certain pattas tendered. The tenants contended in those cases that banjar lands should also be included in the patta. The contention of the landlord was that they were not ryoti lands as they were let for grazing. The Deputy Collector held that the tenants were entitled to have the lands included in the patta. On appeal the District Judge held that the ryots were not entitled to have the banjar lands included in the patta. The learned Judge observed:

The lowness of the rates is strong evidence that the lands were merely for grazing and so also is the fact that a special name is given. The estate in order to get a small rent on waste cultivable land was allowing it to them for grazing until such time as cultivation should increase and the lands be needed.

6. Second Appeals were filed and the High Court affirmed the judgment of the

District Judge. The learned Judges (Ayling and Hannay, JJ.) observed:

As regards the banjar lands, we agree with the District Judge. It is also seen from the muchilikas that the tenants held these lands on favourable terms from year to year subject to the liability to relinquish them whenever any one should come forward prepared to cultivate them on the usual terms as to rent. A person in occupation of the land in these conditions cannot be regarded as a "ryot" within the definition in Section 3 of the Act, and he cannot claim the benefit of Section 6 (1) in respect of such lands.

7. Taking advantage of the result of this litigation the zamindar filed suits to eject the tenants from the banjar lands. The tenants pleaded a right of permanent occupancy and denied that the suit lands were banjar lands, and raised various other contentions. The District Munsif before whom the ejectment suits came on held that the tenants and their predecessors-in-title have from time immemorial been using the lands for cultivation, that they had occupancy right in the lands, that the banjar clause in the pattas and muchilikas even if it applied to the suit lands was invalid and that the defendants could not be ejected from the lands. He held that the previous litigation in the revenue Court did not render the matter *res judicata*. On appeal the Subordinate Judge confirmed this decision. Second Appeals were filed in the High Court and the learned Judges (Sadasiva Ayyar and Spencer, JJ.) were of opinion that the previous decision of the revenue Court did not render the matter *res judicata*, and dismissed the second appeals. The question whether Section 26 (3) applies so as to entitle the landlord to claim a higher rent without having recourse to proceedings u/s 30 depends mainly upon the question of fact in this case as to the circumstances under which the low rates were originally fixed in respect of these lands.

8. Both the Courts have found that the rents originally fixed were low and are at present much lower than the rents for the adjacent lands of the same quality. Section 26 (1) relates to enhancement of rent originally fixed at a lower rate in consideration of bringing waste land into cultivation or making improvement upon the holding and it provides that such rent shall not be liable to enhancement during the period for which such lower rate is payable by contract or custom, so long as the ryot shall substantially fulfil "the terms upon which and the purposes for which such lower rate was allowed.. Clause (2) provides that after the expiry of the period for which such lower rate of rent is payable or if the terms upon which and the purposes for which such lower rate was allowed have not been substantially fulfilled, the landholder shall be entitled to the full rate. Clause (3) runs as follows:

Except as provided by Sub-section (1) no rate of rent at which land may have been granted by the landholder shall be binding upon the person entitled to the rent after the lifetime of the landholder if such rate is lower than the lawful rate payable by the ryot before the date of the grant upon the land or upon land of similar description and with similar advantages in the neighbourhood.

9. Section 30 provides for cases which do not fall u/s 26 and whether the landlord wants to enhance the rent. Under that section the landholder has to file a suit before the Collector to enhance the rent and can only rest his claim to enhancement on the grounds mentioned in the section.

10. In *Karuppa Goundan v. Narayana Chettiar* [1918] 7 M.L.W. 376, it was held that except in, cases where a prior landholder had consented to a lower rate for any of the reasons specified in Section 26 (1), Estates Land Act, 1908, a succeeding landholder was not bound to accept the lower rate but can enforce the lawful rate payable by the ryot prior to the date of the grant on such lower rate. In *Peria Pachai v. Ameeruddin* AIR 1923 Mad. 306, it was held that where the lower rate was on account of the fact that certain portions of the lands were saline or uncultivable, the ryots were entitled to continue to pay the lower rent so long as the land remained saline. Sir Walter Schwabe, C.J., observed:

Section 26 is dealing with cases where there has been an actual prior rent greater than the rent claimed by the tenant and does not deal with cases where a ryot is setting up that ab initio the rent payable was the lower rent and setting up that the terms of tenancy always had been the lower rent but to be increased to the higher rent in certain eventualities. In my judgment it makes no difference that in various documents it is described as a higher rent reduced to a lower amount, those "eventualities not having happened.

Wallace, J., observed:

I only wish to say as regards the interpretation of Section 26 (3) that it does not seem to me that the lawful rate payable is necessarily or invariably the faisal rate fixed by Government, but may be contract rate on which the occupancy is based. This is a matter which has to be proved and in this case, on the evidence, it appears to me that the lawful rate payable was the contract rate viz., Rs. 12-1-3 a permanent deduction from what would have been the rent if the whole land was cultivable having been allowed because it was saline and so long as it remained so.

11. In *Rajah of Vekatagiri v. Ayyappa Reddi* [1913] 38 Mad. 738, it was held that land taken for pasturage was not ryoti land and that the amount levied as grazing fee was not rent. A similar view was taken in *Sri Ravu Seshayya Garu Vs. The Rajah of Pittappur, Sri Raja Ravu Venkata Kumara Mahipati Surya Rao Bahadur Varu, . In Battina Appanna and Others Vs. Sreemanthu Raja Yarlagadda Venkataramalinga Bahadur Zemindar Garu, ,* it was held that an extra payment claimed for additional advantages is not necessarily an enhancement and that where new circumstances came into existence which required new adjustments there was no question of enhancement.

12. Section 26 (3) refers to cases where the rate fixed is lower than the lawful rate payable by the ryot before the date of the grant upon the land or upon the land of similar description and with similar advantages in the neighbourhood. It is not shown by the appellants that Section 26 (1) applies and that the letting

was for purpose mentioned in Cl (1); what we have to see is whether the conditions in Prov. 3 are satisfied. Upon this question the findings of both the Courts which I have already set out show that the rent for these lands is lower than the lawful rate payable for lands of similar description. The fact that under the original grant the tenants had to give up these lands if there were applications for cultivation by others and the findings in the first batch of appeals which raise the question whether these lands should be included in the pattas or not support the view of both the lower Courts in the present case; and unless the defendants can show that the rents on the suit lands are normal and reasonable and bring the case u/s 30, the landlord's right is clear to enhance the rent without the intervention of the Court. It is argued for the respondent that the decision in the first batch of appeals renders the question as to the nature of the lands *res judicata* as both these suits and the present suits fell exclusively within the jurisdiction of the revenue Courts. For the appellants it is contended that as the decisions of civil Courts are binding on the revenue Courts the decision in the second batch of suits to eject renders the question that the lands were ryoti lands with right of permanent occupancy *res judicata*. It is also argued that where there are two decisions the second is the decision to govern the question of *res judicata*. It is also argued that though the Estates Land Act expressly makes the decision of revenue Courts binding on civil Courts the previous state of the law that the decision of the civil Courts is binding on the revenue Courts has not been affected.

13. It is unnecessary to go into this question as from either point of view the respondent on the facts is entitled to succeed. If the lands were originally banjar lands let for purposes of grazing it is clear from the authorities that the grazing-fees charged would not be rent and the lands would not be ryoti lands, and neither Section 26 nor Section 30 would apply. If the effect of the decision in the second batch of appeals is that these lands were ryoti lands then the findings of both the Courts that the rents were lower than the lawful rate of rent payable upon land of similar description and with similar advantages in the neighbourhood entitle the landlord to enhance the rent. Mr Varadachari argues that there is no evidence to show that the rents originally fixed were lower than the rate of rent payable by the ryot before the date of the grant upon the land or upon land of similar description and with similar advantages in the neighbourhood. Both the lower Courts have relied on the adangal and amarakam accounts (Exs. G and C series,) and on the terms of the previous pattas which provide for the ryots giving up the banjar lands if required for cultivation by other people. Both the Courts "also find that the lands in question are of the same quality as the adjoining lands and that the rent is lower. I cannot say that there is no evidence on which both the Courts acted in coming to the conclusion which they did. The appeals fail and are dismissed with costs.

Reilly, J.

14. I agree.