
(1927) 09 MAD CK 0012
In the Madras High Court

Yenamandra Ganapati Rao

APPELLANT

Vs

Dulla Sattamma

RESPONDENT

Date of Decision : 21-09-1927

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(5)

Citation : AIR 1928 Mad 960

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—The original suit from which this second appeal arises is a suit to eject a tenant of what is called dumbala inam land. The real

point for decision is whether the civil Court has jurisdiction to entertain the suit. The first Court held that it had not and dismissed the suit. The

lower appellate Court agreed that the civil Court is not the proper forum, but held and rightly held that the District Munsif should not have

dismissed the suit but should have returned the plaint and he decreed accordingly. The plaintiff has appealed contending that the civil Court has

jurisdiction.

2. It is admitted that the land is ryoti land and that the defendant was let into possession by the plaintiff in 1908 and was in possession after the

coming into force of the Madras Estates Land Act. Prima facie by force of Section 6 of that Act the defendant would have acquired occupancy

right i.e. ½ the plaintiff was the landholder. But the plaintiff contends that he himself was then and is now the ryot holding the occupancy right, that

the inam grant was of the melwaram only at a time when his ancestors already held the kudivaram right, and that, therefore, he does not by force of

the grant lose the kudivaram right. He claims, therefore, that the defendant was only a tenant of the kudivaram holder (himself) and that Section 6

does not entitle the defendant to oust the plaintiff from his kudivaram right.

3. The contention on which the plaintiff founded his case in the lower Courts was that the inam was a pre-settlement one. Both the lower Courts

concurred in the finding that it was a post-settlement inam and they are supported by the Re-cord-of-Rights, Ex. 7. Defeated on that point the

plaintiff in this Court has raised for the first time the plea that the inam grant was of the melwaram only to a kudivaram holder and contends that the

onus is on the defendant to show that that view is wrong. This is a convenient position for him inasmuch as there is now no evidence available as to

the terms of the actual grant; but his position seems to me untenable. There is no presumption in the plaintiff's favour that the grant was as he says,

and there is no evidence about it. The plaintiff, therefore, has to prove that the inam grantee held the kudivaram right and he has adduced no

evidence that he did. A contention of this kind should obviously have been put forward from the beginning as part of the plaintiff's case. He is

relying on it here for two purposes: first to show that the jurisdiction of the civil Court is not ousted; and second, to show that the defendant has not

acquired occupancy right. There were issues taken on both points and the present contention was not put forward on those issues. It was not set

out in the plaint and certainly is not inherent, as had been argued, in the word "dumbala" as defined in; Wilson's Glossary in MacLean's Manual.

The present suit has been twice before the trial Court and twice before the lower appellate Court and not until now has this contention been raised.

I am not prepared to allow the plaintiff to take it here. It is a question of fact and not of law and should have been pleaded as such in the plaint.

4. Plaintiff, therefore, has not proved that the inam grantee was the holder of the kudivaram right at the time of the grant. As he now contends that

he is the holder of both warams he must accept the position that both are obtained by the grant. He is, therefore, prima facie a landholder within

the meaning of Section 3 (5), Estates Land Act: see the Full Bench case in *Bramayya v. Achiraju* AIR 1922 Mad. 373. He is also on his own

contention the ryot, and the defendant is, therefore, on the plaintiff's position an occupier of ryoti land who does not hold the occupancy right, that

is, a non-occupancy right. To such a suit Section 153, Estates Land Act, primarily applies if the suit is on one of the grounds that have been there

set out. Plaintiff's suit is on the footing that the defendant was let into the land as his tenant for four years under a muchilika which is dated 20th

March 1908, that is, prior to the passing of Act 1, 1908, and that since the expiry of the lease in 1912 defendant has been continuing oral leases

from year to year. Prima facie then the proviso to Section 153, added by Act 4, 1909 will not apply, and none of the rest of the section applies.

The civil Court is, therefore, the proper forum in which the suit must be brought and the decision of the lower Courts is wrong.

5. As plaintiff has already given up his claim for rent, the only issue now remaining for settlement is issue (3), and the decision on that will settle the

case now one way or the other. The simplest plan, therefore, is to call on the lower appellate Court to submit a finding on that issue. Evidence has

already been let on this issue and a finding once recorded by the Additional District Munsif, Cocanada, in his judgment, but the judgment was

reversed on appeal. However, as both parties had already adduced their evidence on the issue, there is no ground for permitting fresh evidence.

The finding will be on the evidence on record. Time for finding, six weeks- For filing objections, ten days.

6. [In compliance with the order in the above judgment the Subordinate Judge of Cocanada submitted the following finding :]

Finding

7. In this appeal I am called upon to submit a finding on the evidence-on record on the following issue:

Has the defendant got occupancy rights?

8. From the judgment of the appellate Court it is clear that the land in suit was finally held to be a post-settlement inam and that the plaintiff is the

holder of both warams. He is, therefore, prima facie a landholder within the meaning of Section 3 (5) Estates Land Act, Bramayya v. Achiraju AIR

1922 Mad. 373 It is admitted that defendant was let into possession by the plaintiff aforesaid in 1908 and that he was in possession after the

coming into force of the Madras Estates Land Act. Plaintiff no doubt alleged that the defendant was continuing in possession under oral leases

obtained from him formally from year to year. But there is not a scrap of

evidence to make out his case beyond a vague allegation in the plaint.

Defendant, while denying the oral leases, contends that he has been in occupation of the land continuously since prior to 1908. It is not the case of

the plaintiff that the land in question is old waste nor is there any material forthcoming from the record to show that the plaintiff is a ryot himself in

addition to his being a landholder. Prima facie, therefore, by force of Section 6 of the Act the defendant must be deemed to have acquired

occupancy rights by virtue of his possession of the land when the Act came into force and there is no evidence to displace this" presumption. The

plaintiff's vakil has not been able to refer me to any such evidence or authority in support of the position taken by him. My finding therefore on the

issue is in the affirmative to the effect that the defendant has got occupancy rights in the land.

9. [This second appeal coming on for final hearing after the return of the finding of the lower appellate Court upon the issue referred to by this

Court for trial, the Court delivered the following judgment]

JUDGMENT

10. I accept the finding and dismiss the appeal with costs.