
(1941) 02 MAD CK 0034
In the Madras High Court

Y.G. Peria Muniswami Mudali and Others	APPELLANT
Vs	
Sena Narasappa Mudali (deceased) and Others	RESPONDENT

Date of Decision : 21-02-1941

Acts Referred:

Madras Estates Land Act, 1908 — Section 112

Citation : (1941) ILR (Mad) 785 : (1941) 2 MLJ 79

Hon'ble Judges : Alfred Henry Lionel Leach, C.J;Venkataramana Rao, J;Patanjali Sastri, J

Bench : Full Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This appeal raises questions of importance with regard to the interpretation of the Madras Estates Land

Act, 1908. As the case is not concerned with any of the alterations made by the amending Acts of 1934 and 1936 the sections to which I shall

refer in the course of this judgment will be those of the original Act.

2. On the 30th November, 1925, Sadayappa Govindappa Mudali, a tenant of ryoti lands in the village of Malapudi, which is in the Karvetnagar

Zamindari, sold his interest in certain of the lands to one Kanniappa Mudali and mortgaged his interest in other of the lands to one Kandappa

Mudali. The lands sold to Kanniappa have been referred to as the A schedule lands and the lands mortgaged to Kandappa as the B. schedule

lands, and it will be Convenient to continue these descriptions. On the 29th June, 1926, Kanniappa sold his rights in the A schedule lands and

Kandappa assigned his rights as mortgagee in the B schedule lands to the first respondent. The owner of the Zamindari was one Vijayammal, who

leased the whole village to the fourth appellant in 1929 for three faslis. The period of the lease commenced from the 1st July, 1929, and terminated

on the 30th June, 1932. As the result, the fourth appellant became the ijaradar, or the farmer of the rents, of the A and B schedule lands and subject to the prohibition of Section 6 (6) of the Act which says that an ijaradar shall not, while so holding, acquire otherwise than by inheritance or devise a right of occupancy in land comprised in the ijara. When Vijayammal granted this three years" lease to the fourth appellant the first respondent was in possession of the A schedule lands as a ryot with a permanent right of occupancy, and admittedly he continued to hold the lands in such capacity under the fourth appellant. It has been suggested in the course of this appeal that he also held the B schedule lands in the same capacity, but this has not been proved and it must be assumed that they were being cultivated by Sadayappa Govindappa Mudali or his sub-tenants. So far as this appeal is concerned, the first respondent must be treated merely as the mortgagee of the B schedule lands. The first respondent defaulted in the payment of his rent in respect of the A schedule lands for fasli 1339 (1929-30) and default was also made in the payment of the rents due for this period in respect of the B schedule lands. The result was that the fourth appellant as the ijaradar issued notices u/s 112 of the Madras Estates Land Act, but these notices were only served upon the first respondent. It is common ground that no patta was ever tendered to the first respondent, but he was accepted as the lawful transferee and as the holder of the permanent right of occupancy of the A schedule lands. The notices issued by the fourth appellant u/s 112 were ignored and in due course the lands comprised in both the schedules were sold by the Collector for default in payment of rents, the fourth appellant being the purchaser. The sales took place on the 26th August, 1931, that is, before the term of the ijara expired, but possession was not delivered to him till the 4th February, 1933, which was more than seven months after the term had expired.

3. On the 2nd February, 1934, the first and second respondents filed a suit in the Court of the District Munsif of Sholinghur for a decree setting aside the sale of the A schedule lands on the ground of irregularity and directing that possession be given to them. They also asked for a declaration of their rights as mortgagees of the B schedule lands. The second respondent is the brother of the first respondent. There were seven

defendants, the third, fourth and fifth respondents, and the four appellants in this appeal. The third, fourth and fifth respondents were made parties as sub-tenants of the first and second respondents who had attorned to the fourth appellant after he had purchased the A schedule lands at the auction. The first and second appellants purchased from the fourth appellant the interest which he acquired in the suit properties in the auction, and the third appellant is his agent. The plaintiffs-respondents averred that the sale was invalid because notice u/s 112 had not been served on the original pattadar Sadayappa Govindappa Mudali, that Section 6 (6) operated as an absolute bar to the fourth appellant becoming the auction purchaser, and that after the sale had taken place the rents which were owing were paid, as the result of which the rights of all the defaulting ryots were restored. The fourth appellant and the other contesting defendants denied that the suit was maintainable and averred that the lands had been lawfully sold. They also denied that there had been any payment of the arrears of rent after the sale had taken place. The District Munsif held that the sale was invalid because notice had not been served on the pattadar u/s 112 and that consequently the suit was cognizable by a Civil Court. He considered that Section 6 (6) was not a bar to the ijaradar purchasing at the auction, and he accepted the evidence of the plaintiffs-respondents that after the sale the arrears of rent had all been paid and the position of the ryots fully restored. On these findings he granted a decree declaring that the plaintiffs-respondents were entitled to the A schedule lands as owners and to the B schedule lands as mortgagees and directing the defendants to surrender possession of the A schedule lands to the plaintiffs. The appellants appealed to the District Judge of Chittoor. The District Judge considered that the chief question which arose for consideration was whether an ijaradar who had bought in a ryot's land for arrears of rent was entitled to hold the land as an occupancy ryot after he had ceased to be a landholder, and as in his opinion Section 6 (6) operated as a bar he held that the Collector should have refused to deliver the lands to the fourth appellant. On this ground he dismissed the appeal. The other questions raised in the trial Court were argued but in the opinion of the District Judge they did not really matter, although he held that the allegation of the plaintiffs-respondents that the fourth appellant had accepted the arrears of rent and treated the rent sale as a nullity was both "false and an obvious

after-thought." In making this sweeping assertion the District Judge did not discuss the evidence and it will be necessary to return to this matter

later.

4. In this Court the appellants have advanced two arguments in support of their appeal. In the first place they say that the suit was not maintainable

because the Revenue Court alone had jurisdiction. On the assumption that the first respondent was the holder of the kudivaram right in both the A

and the B schedule lands they say that inasmuch as he was served with notice u/s 112 he ought to have filed a suit in the Revenue Court. That was,

it is urged, his only remedy. The second contention is that the District Judge entirely misconstrued the effect of Section 6 (6). The plaintiffs-

respondents meet the first argument by saying that the A and B schedule lands stand on different footings as the first respondent was not the holder

of the B schedule lands, but was merely a mortgagee, and that in any event, there was no valid sale inasmuch as no notice was served on the

original pattadar, Sadayappa Govindappa Mudali, no other patta having been issued since he was in occupation of the lands. They deny that the

first respondent was a defaulter within the meaning of Section 112 and would have it that the case comes within the Full Bench decision of this

Court in B. Raja Rajeswara Sethupathi alias Muthuramalinga Sethupathi Avergal, Raja of Ramnad (through his authorised agent Rao Sahib S.

Thirumalai Ayyanger Avergal Dewan of Ramnad Vs. Venkataramaiyar and Another, . They also say that the District Judge correctly interpreted

Section 6 (6), but that he erred in holding against them on the question whether the fourth appellant had accepted payment of all the arrears of rent

after the sale had taken place.

5. The appellants obviously cannot treat their case with regard to the B schedule lands as being on the same basis as the A schedule lands. As I

have already indicated there is no evidence that the first respondent was ever in occupation of the B schedule lands as a ryot; in fact, the fourth

appellant and the other contesting defendants made no averment to the contrary in their written statements. Therefore it will be necessary to deal

with the A and the B schedule lands separately. For the moment, I will confine my observations to the case of the plaintiffs-respondents so far as

the A schedule lands are concerned.

6. Section 111 says that when an arrear is not paid within the revenue year in which it accrued due, it shall be lawful for the landholder to sell the holding or any part thereof, in the manner provided by the Act in satisfaction of what is due with interest and costs of the sale. Section 112 provides that when the landholder intends to avail himself of the powers given by Section 111, he shall serve on the defaulter through the Collector a written notice stating the amount due for arrears, interest, and costs, the period for which and the holding in respect of which it is due, and informing him that if he does not pay the amount or file a suit before the Collector contesting the right of sale within thirty days from the date of service of the notice, the holding or any part thereof specified in the notice will be sold. If the arrear is not paid and no suit contesting the right of sale is instituted within the time stated the landholder may apply to the Collector for sale. Notice was served on the first respondent and as he took no steps to contest the right of sale before the Collector, and as all the requirements of the Act with regard to the proclamation of sale and the holding of the auction were complied with the sale must be held to be valid so far as the A schedule lands are concerned, if the first respondent is in law a defaulter within the meaning of Section 112.

7. The question of the meaning to be attached to the word, "defaulter" in Section 112 was raised and decided recently by a Full Bench of this Court of which I and my learned brother Patanjali Sastri were members in *M. Lakshmana Aiyar and Another Vs. Aiyasami Chettiar and Another*, since reported in *M. Lakshmana Aiyar and Another Vs. Aiyasami Chettiar and Another*, It was there held that a transferee of ryoti land who has been accepted by the landholder as the ryot is a defaulter, notwithstanding that the procedure contemplated by Section 146 has not been complied with. In *The Midnapore Zamindari and Co. v. Muthupudayan* (1920) 40 M.L.J. 213 : ILR Mad. 534 it was held that the word "defaulter" within the meaning of the Madras Estates Land Act denotes only the person who is the registered pattadar or his heir or the person whom the landholder has become bound to recognize as the ryot u/s 146 of the Act. The Full Bench considered that this definition was too limited and the landholder might, if he so chose, accept the transferee without being served with a notice in writing or a certified copy of a decree or order of a Civil Court

establishing the transfer or by the production of a sale certificate, which-ever happened to be appropriate. The Full Bench pointed out, however,

that before action can be taken u/s 112, Section 53 requires that the landholder shall have issued a patta to the transferee, not necessarily bearing

his name, but a patta which is intended to be the transferee's patta. In that case, a transferee had been accepted as a ryot without any formalities

and a patta had been issued to him though it bore the name of the transferor. In the course of the argument in the present case it was suggested by

Mr. Satyanarayana Rao, on behalf of the plaintiffs-respondents that the Full Bench judgment should be read as deciding that a person could not be

a defaulter within the meaning of Section 112, unless in addition to being recognised by the landholder as the ryot a patta had been issued to him.

There is nothing in the language used in the judgment in that case which justifies such a construction, and in order to avoid a similar argument being

raised again, I, as a member of the Full Bench and as the member who delivered the judgment, desire to say that what was laid down there was

that a transferee could be recognised as a ryot without any formality and if he was so recognised he became a defaulter within the meaning of

Section 112, irrespective of whether a patta was issued to him or not. In view of the provisions of Section 53, Section 112 could not, however, be

invoked by the landholder unless he had in fact issued a patta to the transferee. It follows from the decision of the Full Bench in *M. Lakshmana*

Aiyar and Another Vs. Aiyasami Chettiar and Another, that the first respondent was a defaulter within the meaning of Section 112, but as a patta

was not issued to him either by the Zamindarini or by the fourth appellant as the *ijaradar*, the sale was unlawful.

8. But this does not mean that the plaintiffs-respondents were entitled to challenge the validity of the sale in a suit in a Civil Court. Section 189 (1)

of the Act says that all suits and applications of the nature specified in parts A and B of the schedule can be heard and determined by a Collector

or other Revenue Officer specially authorized under the Act, and no Civil Court in the exercise of its original jurisdiction shall take cognizance of

any dispute or matter in respect of which such suit or application might be brought or made. Clause No. 12 of Part A relates to a suit "to contest

the right of sale of a holding." Therefore a suit to contest the right of sale of a holding can only be brought in a Revenue Court. Sub-section (3) of

Section 189 provides that the decision of a Revenue Court or of an appellate or revisional authority in any suit or proceeding under the Act on a matter falling within the exclusive jurisdiction of the Revenue Court shall be binding on the parties thereto and persons claiming under them, in any suit or proceeding in a Civil Court in which "such matter may be in issue between them." This sub-section does not however, detract from the absolute prohibition contained in Sub-section (1). It only means that where a matter has been decided in a Revenue Court and the decision there is one of the factors in a Civil suit the finding of the Revenue Court cannot be questioned and must be taken as conclusive on the particular point at issue, in the Civil suit. The position then is this. Where notice has been duly served upon a defaulting ryot he must file a suit in a Revenue Court within thirty days; otherwise he will be precluded from challenging the sale on any of the grounds which could be urged in a suit u/s 112. And there is authority of this Court for this assertion.

9. In B. Raja Rajeswara Sethupathi alias Muthuramalinga Sethupathi Avergal, Raja of Ramnad (through his authorised agent Rao Sahib S.

Thirumalai Ayyanger Avergal Dewan of Ramnad Vs. Venkataramaiyar and Another, , the Court had to consider a case where no notice u/s 112

was given to the ryot by the landholder of his intention to sell. There was a complete disregard of the requirements of Section 112 in this respect

and it was held that such a case did not come within Clause 12 of Part A of the schedule. Consequently the Civil Court had jurisdiction. The

judgment did not go beyond the particular facts of the case and cannot be taken as having any application to a case where the notice was duly

served although the question referred to and answered by the Full Bench was very wide. In Aiyya Mudali Velalan Vs. Sourimuthu Odayan and

Another, , Jackson, J., held that where a ryot, upon whom notice had been served u/s 112, contested the landlord's right of sale on the ground

that a patta had not been tendered to him u/s 53 he was bound to bring a suit in the Revenue Court as such a suit fell within Clause 12 of Part A of

the schedule. The learned Judge rightly pointed out that the decision in B. Raja Rajeswara Sethupathi alias Muthuramalinga Sethupathi Avergal,

Raja of Ramnad (through his authorised agent Rao Sahib S. Thirumalai Ayyanger Avergal Dewan of Ramnad Vs. Venkataramaiyar and Another, ,

had here no application. In deciding that the Civil Court had no jurisdiction in such a case Jackson, J., relied on the decision of this Court in

Irulappan Servai v. Veerappan (1921) 42 M.L.J. 113 where it was said that the absence of a patta or muchilika would be a ground for a suit

before the Collector under the provisions of Clause 12. The latest decision on this question is that given by Venkataramana Rao, J., in Raju

Goundan Vs. Kuppu Goundan, , where the learned Judge said:

The correct view in my opinion is that no suit will lie in a Civil Court to set aside a sale on any of the grounds which could have been urged to

contest the right of sale in a suit u/s 112, whether it relates to jurisdiction or mere irregularity in procedure. But where there is no notice of sale, or

where the ground of attack relates only to matters arising out of or consequent on the sale and generally could not be urged in a suit u/s 112, the

jurisdiction of the Civil Court is not taken away.

10. With these observations I am in full agreement.

11. When he was served by the fourth appellant with a notice u/s 112 the proper course, if he wished to contest the right of sale of the A schedule

lands, was for the first respondent to file a suit in the Revenue Court. The fact that no patta had been issued to him would have entitled him to a

decision in his favour. He refrained, however, from taking this course and so far as the A schedule lands are concerned he cannot challenge the

validity of the sale in a Civil Court. The sale was held after due compliance with all the procedure contemplated by the Act and must stand, unless

the evidence tendered by the plaintiffs-respondents justifies a finding that after the sale had taken place the landholder accepted payment of the

arrears and thereby cancelled the sale.

12. Turning now to the B schedule lands, it is accepted that notice was merely served on the first respondent, who was the mortgagee. Neither the

pattadar nor his sub-tenants were given any intimation of the intention to sell for default in payment of the rents due. The omission to serve the

pattadar brings the case so far as the B schedule lands are concerned directly within the judgment in B. Raja Rajeswara Sethupathi alias

Muthuramalinga Sethupathi Avergal, Raja of Ramnad (through his authorised agent Rao Sahib S. Thirumalai Ayyanger Avergal Dewan of Ramnad

Vs. Venkataramaiyar and Another, . Therefore, the plaintiffs-respondents are in a

position to maintain the suit to this extent.

13. The next question for decision is the effect of Section 6 (6). In my opinion the right of occupancy referred to in this subsection is the right of

permanent occupancy and anything short of this may be purchased by the ijaradar. The right of permanent occupancy is not the only right of

occupancy contemplated by the Act. Section 46 provides the procedure by which a "non-occupancy ryot" of a holding, that is a ryot without a

permanent right of occupancy, can, subject to certain exceptions which I shall mention in a moment, convert his interest in the land into a right of

permanent occupation for agricultural purposes. He must tender a sum equal to two and a half times the annual rent payable in respect of the land

together with the cost of preparing the necessary instrument. If he does so, the landholder must confer upon him a permanent right of occupancy.

Exceptions, however, are made in the cases falling under Sub-sections (4) and (5) of Section 6, and Sub-section 4 of Section 8. Sub-section (4)

of Section 6 states that admission to waste land under a contract for the pasturage of cattle and admission to land reserved bona fide by the

landholder for forest under a contract for the temporary cultivation with agricultural crops shall not by itself confer upon the person so admitted a

permanent right of occupation. Sub-section (5) of that section provides that when a landholder has reclaimed waste land by his own servants or

hired labour he may by contract in writing prevent any person from acquiring a permanent right of occupancy in respect of that land during a period

of thirty years from the date of the first cultivation after reclamation. Sub-section (4) of Section 8 says that in cases where the interest of the ryot in

the holding has passed to the landholder by transfer for valuable consideration before the passing of the Act otherwise than at a sale for arrears of

rent, or has passed by inheritance, the landholder shall have the right for a period of twelve years from the passing of the Act of admitting any

person to the possession of the land on such terms as may be agreed upon and the person so admitted shall not be entitled during this period to the

benefit of Section 46. Therefore Sections 6 and 8 when read in conjunction with Section 46 also show that a person may be in lawful possession

of ryoti land for purposes of agriculture without having a permanent right of occupation. Section 153 sets out the grounds on which a non-

occupancy ryot may be liable to ejectment by a suit in a Revenue Court.

14. Emphasis has been laid by the learned advocate for the plaintiffs-respondents on the fact that in Sub-sections (1), (3), (4) and (5) of Section 6

the words "permanent right of occupancy" are used and that in Sub-section (6) the expression is merely "right of occupancy", but the explanation

for this is that Sub-section (6) was taken from the Bengal Tenancy Act, 1885, and the draftsman forgot that he had used the adjective "permanent

in the other sub-sections. Sub-section (3) of Section 23 of the Bengal Tenancy Act as it then stood read, "A person holding land as an ijaradar or

farmer of rents shall not while so holding acquire a right of occupancy in any land comprised in his ijara or farm." In the Bengal Tenancy Act there

is no reference to "permanent occupancy" but only to "right of occupancy", although the right contemplated is a permanent right. The Calcutta High

Court has consistently construed Section 23 (3) as not preventing an ijaradar from becoming a purchaser at a sale of an occupancy holding. If he

bought at a sale held in default of payment of rent, the occupancy right only ceased and he was entitled to hold the land as a non-occupancy

holding, to use the words of Sen, J., in *Midnapore Zamindari v. The Secretary of State for India* in Council 43 C.W.N. 57 which is the most

recent case dealing with the subject and in which the earlier cases are referred to.

15. The effect of Section 6 (6) of the Madras Act was considered by a Bench of this Court in *Muhammad Gosukani v. Muhammad Sekka*

Maracayar (1935) 70 M.L.J. 146 : ILR Mad. 779 an appeal under Clause 15 of the Letters Patent preferred against a decree passed by

Curgenven, J., in a second appeal. Curgenven, J., said:

What happens is that the defaulting tenant loses his holding, in which he held an occupancy right, while the ijaradar acquires the holding, but without

acquiring the occupancy right.

16. This opinion was accepted by the Bench which heard the appeal, and I consider rightly so. Section 130 expressly permits a landholder to bid

for or purchase a ryot's holding which is to be put up for sale for arrears of rent. An ijaradar is the landholder for the time being and it is difficult to

see why he should be put in a less advantageous position than a permanent landholder when he has had occasion to bring a ryot's holding to sale

for default in payment of rent. If a landholder buys his tenant's interest, that is,

the kudivaram right, his purchase does not change the character of the land from ryoti to non-ryoti. The landholder in such circumstances may cultivate the holding himself, but if he lets it to a tenant for the purposes of cultivation, except in the exceptional cases provided for in the act, the tenant acquires the right of permanent occupancy. The position will not be changed if an ijaradar purchases. If after his purchase he lets in a tenant during the period of the ijara the tenant will automatically acquire a permanent right of occupancy. If he does not let in a tenant the ijaradar will be left, on the expiration of his lease merely with the right to possession of a non-occupancy ryot. Moreover to read Section 6 (6) as prohibiting an ijaradar from buying in at a sale might lead to great injustice. There might be no other bidders, either as the result of boycott or lack of interest. Is the ijaradar in such circumstances compelled to leave the defaulting tenant in possession ? The intention of the Legislature could not have been to put an ijaradar in such a disadvantageous position. I have stated what I consider to be the reason why the word "permanent" was omitted from Sub-section (6) of Section 6, and I do not consider that this omission makes any difference. For these reasons I hold that Section 6 (6) does not operate as a bar to the ijaradar purchasing at the auction.

17. The only other question which remains to be considered is that with regard to the finding of the District Judge that the plaintiffs-respondents had falsely claimed to have paid the fourth appellant the arrears of rent subsequent to the sale. The District Munsif after a detailed examination of the evidence came to the conclusion that the evidence was true and the District Judge ought not to have reversed this finding without stating his reasons. As he considered that Section 6 (6) decided the appeal he could have abstained from considering any question of fact, but he did not content himself with this and therefore should have examined the evidence fully and stated his reasons for differing from the District Munsif. As the District Judge's judgment stands this Court has no guidance as to what was in his mind and as it has become necessary for this Court to decide the question of fact the case will have to be sent back to the District Judge for a statement of his reasons for holding that the evidence adduced by the plaintiffs-respondents on the payment of arrears was false and an afterthought. The District Judge will be directed to submit his reasons to this

Court within three weeks.

18. The position may be shortly put in this way. The suit does not lie so far as it challenges the right of sale of the A schedule lands, but it does lie

on the question of whether the sale was rendered nugatory by reason of the acceptance of the arrears of rent after the sale. So far as the B

schedule lands are concerned the plaintiffs-respondents are entitled to a declaration that the sale does not affect the position of the first respondent

as a mortgagee.

19. The question of costs will be decided when the case is further considered after the District Judge has submitted his reasons for his finding on

the facts.

Venkataramana Rao, J.

20. I agree,

Patanjali Sastri, J.

21. I agree and have nothing to add.

[After the report was received, their Lordships examined the evidence and held :]

* * * *

22. In these circumstances we agree with the learned District Judge and give a finding u/s 103 of the CPC in favour of the fourth appellant.

23. The result is that the plaintiffs-respondents will get a declaration that so far as the B schedule properties are concerned the sale does not affect

the position of the first respondent as mortgagee, but in other respects their suit will be dismissed. The parties will receive and pay proportionate

costs throughout.