

(1926) 08 MAD CK 0086
In the Madras High Court

Zamindar of Bodokimidy

APPELLANT

Vs

Budankayala Bhimayya and Others

RESPONDENT

Date of Decision : 27-08-1926

Acts Referred:

Citation : AIR 1927 Mad 76

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—This second appeal arises out of a suit brought by the Zamindar of Peddakimidi to establish his right to a tamarind tope in a village within the Zamindari. The first and principal defendant was impleaded because he alleged that he had bought the occupancy rights of the ryots and therewith the right to the trees on the jirayati lands. No evidence of this sale having been adduced in the trial Court, the learned District Munsif held that the defendants must be treated as mere trespassers unentitled to avail themselves of the provisions of Section 12 of the Madras Estates Land Act. Even if they were so entitled (he continued) there was sufficient evidence to show that when the inam village, as it formerly was, was resumed in 1890 and re-granted as jirayati, the right to the trees was not granted to the ryots. He accordingly decreed the claim.

2. In appeal, the learned Subordinate Judge although holding that the civil Court had no jurisdiction to try the suit, proceeded to dispose of it upon its merits. He admitted in evidence the 1st defendant's sale deed, found that he thus stood in the shoes of the occupancy ryots, applied Section 12 and decided against the Zamindar's claim. This Second Appeal is filed on behalf of the late plaintiff's minor son by the agent of the Court of Wards in Ganjam.

3. An endeavour has been made to dispute the assumption of both the lower Courts, that what the Zamindar granted in 1890, after resuming the inam, was permanent occupancy rights. There is however, a clear admission in para. 3 of the plaint that the grant was of this nature, the phrase "on jirayati tenure" being, so far as my experience goes, only used where occupancy rights exist. It is

further clear that this assumption underlay the proceedings in both Courts, and it appears again in the memorandum of Second Appeal. It is too late now, therefore, to raise a contention to the contrary.

4. It is next said that the 1st defendant's sale deed Ex. 1, has been admitted without proof. A reference to the B diary of the lower appellate Court shows that arguments were handed on 12th December, and that after perusing the record, the Subordinate Judge found it necessary that the then appellant should produce his sale deed. The entry for the 22nd December, then is "sale deed produced and marked as Ex. 1, finally closed." In the absence of any evidence to the contrary, I take this to mean that the document was produced in the presence of the opposite party, and that formal proof was waived.

5. The case does not, however, in my view depend upon whether the 1st defendant's right to stand in the shoes of the occupancy ryots is proved. In whomsoever the permanent occupancy right may reside, the Zamindar has parted with it and that being so he must prove that u/s 12 of the Madras Estates Lands Act, he is entitled to the trees. The plea set up in the plaint is one of custom. This has been found against by the learned Subordinate Judge, mainly on the ground that a custom cannot be established by a practice of less than 20 years. I agree with his conclusion. The landholder has, as his only other alternative, to allege a contract in writing with the ryots. There is only one document of this nature, a muchilika for one year (Ex. A) executed by the ryots, or some of them in 1900, immediately after the inam was resumed. This does reserve to the land-holder "the mango, tamarind and other fruit trees, the dried trees." But since this agreement was in force only for one year, and no similar engagements of later date have been produced, it is no avail to prove a subsisting contract between landholder and ryot (see an unreported case L. P. A. No. 33 of 1925, where a similar point was decided). The other documents on which the plaintiff relied were either mustajari leases or reports from his officials. Apart, therefore, from the failure to allege a written contract in the plaint, no proof of the existence of any such contract has been given. I agree, therefore, that on the assumption that the civil Courts had jurisdiction to try this suit, the plaintiff has not shown that he is entitled to the declaration and other reliefs asked for. I dismiss the Second Appeal with costs.