

PRIVY COUNCIL

(Raja Yerlagadda) Mallikarjuna Prasada Naidu Bahadur Zamindar Garu

Vs.

R. Somayya and others

P.C.A. No. 104 of 1916

(Lords Buckmaster Dunedin, CJ. Sir John Edge and Sir Lawrence Jenkins. JJ)

3.12.1918

JUDGMENT

Sir John Edge J.

This is an appeal from a decree, dated the 26th November, 1914, of the High Court at Madras, which affirmed a decree, dated the 22nd November, 1912, of the Sub-ordinate Judge at Masulipatam, by which the suit had been dismissed.

2. The plaintiff is a *zamindar*, and he brought his suit on the 3rd of April, 1910, for a declaration that certain lands within his *zamindari* in the village of Ayyanki, in the Kistna District, of which the defendants were in possession, were his private lands within the meaning of the Madras Estates Land Act, 1908 (Madras Act I of 1908), in which the defendants had no right of occupancy; for the ejectment of the defendants from those lands, and for *mesne profits*. The defendants resisted the suit on the ground that the lands in question were *ryoti* lands within the meaning of the Act and that they had in them rights of occupancy and were not liable to be ejected by the Civil Court.

3. As defined by Madras Act I of 1908, private land means :-

"The domain or home-farm land of a land-holder by whatever designation known such as kambuttam, khas, sir or pannai."

4. *Ryot* as defined by that Act means :-

"A person who holds for the purpose of agriculture *ryoti* land in an estate on condition of paying the landholder the rent which is legally due upon it."

5. *Ryoti* land as defined by that Act means :-

"Cultivable land in an estate other than private land, but does not include (a) tank-beds, (b) threshing floors, cattle-stands, village-sites, and other lands situated in any village which are set apart for the common use of the villagers, (c) lands granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists."

6. The lands in question do not satisfy the conditions mentioned in (a), (b) or (c), and are therefore not excluded from the statutory definition of *ryoti* land. They were cultivable lands in the estate of the plaintiff, and had been held by the defendants for the purpose of agriculture under a *muchilika*, which will be presently referred to and were not old waste lands.

7. It was enacted by Madras Act 1 of 1908 as follows:-

"6. (1) Subject to the provisions of this Act, every *ryot* now in possession or who shall hereafter be admitted by a land-holder to the possession of *ryoti* land not being old waste situated in the estate of such land-holder shall have a permanent right of occupancy in his holding; but nothing contained in this sub-section shall affect any permanent right of occupancy that may have been acquired in land which was old waste before the commencement of this Act...."

8. To sub-section (1) of section 6 was added by Madras Act IV of 1909 the following explanation:-

Explanation :- For the purpose of this sub-section, the expression 'every *ryot* now in possession' shall include every person who, having held land as a *ryot*, continues in possession of such land at the commencement of this Act."

9. Section 185 of the Madras Act I of 1908 is as follows:

"185. When in any suit or proceeding it becomes necessary to determine whether any land is the land-holder's private land, regard shall be had to local custom and to the question whether the land was before the 1st day of July, 1898 - specifically let as private land to any other evidence that may be produced, but the land shall be presumed not to be private land, until the contrary is shown Provided that all land which is proved to have been cultivated as private land by the land-holder himself, by his own servants or by hired labour with his own or hired stock for twelve years immediately before the commencement of this Act shall be deemed to be the land-holder's private land."

10. Madras Act I of 1908 received the assent of the Governor of Madras on the 25th March, 1908, and the assent of the Governor-General on the 28th June, 1908.

11. The plaintiff endeavored to prove that by custom the lands in question were his private lands. He failed to prove any such custom. In a *muchilika* on the 28th July, 1907, which the defendants or some of them gave to the plaintiff, and under which they agreed to hold the lands as his tenants until the 30th April, 1908, the lands were described as "your Diwanam Kamatam (private) lands."

12. Clause 8 of that *muchilika* is as follows :-

"8. As we have no manner of right and title to the said lands, neither we nor our heirs shall raise any objection to your leasing out the lands according to your pleasure at the expiration of the term, that is, after 30th April, 1908, without the need for a fresh relinquishment from us or any notice from your Sircar at the close of the period of this Khat (*muchilika*), considering this itself as a relinquishment and as a notice."

13. At the trial of the suit there was a conflict of evidence as to whether the lands were the private lands of the plaintiff or were *ryoti* lands, and the evidence which was produced was fully and carefully considered by the trial Judge, who found that the plaintiff had failed to prove that the lands had been cultivated and dealt with as private lands by the plaintiff and his predecessors-in-title. The trial Judge found that the lands were *ryoti* lands, and by his decree dismissed the suit.

14. From that decree dismissing the suit the plaintiff appealed to the High Court at Madras. The appeal was heard by the Chief Justice and Mr. Justice Seshagiri Ayyar, who agreed with the finding on the evidence of the trial Judge. The learned Chief Justice in his judgment said :-

"The Subordinate Judge has found, and I agree with him, that the suit lands were never cultivated by the *Zamindar* as part of home-farm lands and it seems to me that his treatment of them as kambattam was merely colorable for the purpose of defeating the occupancy rights of the tenants. In some parts of India lands of this kind are known as sir lands, and this is one of the terms mentioned in the definition. In *Budley v. Bukhtoo*¹. it was held that sir land is land which a *Zamindar* has cultivated himself and intends to retain as presumable for cultivation by himself even when from time to time he demises it for a season. I think that this test may well be applied here, and that, as the plaintiff has failed to satisfy it, the appeal fails and must be dismissed with costs."

15. That test is obviously suggested by section 185 of the Act, and was rightly applied by the Chief Justice. Mr. Justice Seshagiri Ayyar in his judgment stated that "I see no reason to differ from the conclusion at which the lower Court has arrived." The High Court by its decree affirmed the decree of the Subordinate Judge and dismissed the appeal. From that decree of the High Court the plaintiff has brought this appeal.

16. The concurrent findings of fact as to the lands being ryoti lands must be accepted as binding on the appellant. But it is contended that, after the 30th April, 1908, when their term expired, the defendants were trespassers of the lands, and continued to be and were trespassers when Madras Act I of 1908 was passed and came into force, and that the explanation of sub-section (1) of section 6 of Madras Act I of 1908, which was added by Madras Act IV of 1909, does not apply to a person whose continued possession of ryoti land is that of a trespasser, and applies only when the person continuing in possession does so with the consent of the land holder, which as a fact was not the case here. As a fact, the defendants continued in possession of the *ryoti* lands in suit after the 30th April, 1908, not only without the consent of the plaintiff, but contrary to his wishes and expressed intentions, and contrary to the terms of clause 8 of the *muchilika* of the 28th July, 1907. The appellant's contention as to the effect of the explanation to sub-section (1) of section 6 is, in the opinion of their Lordships, unsound and untenable. The defendants had held the lands from the 28th July, 1907, until the 30th April, 1908, for the purpose of agriculture on condition of paying to the plaintiff, the land-holder, the rent legally due upon the lands. The lands were *ryoti* lands as has been found by each Court below, and the defendants were, in fact, continuing in possession of the land at the commencement of Madras Act I of 1908, although such continuing in possession was without the consent and was contrary to the wishes of the plaintiff. The construction of sub-section (1) of section 6 of Madras Act I of 1908 as amended by section 3 of Madras Act IV of 1909 is too plain for argument. Assuming that the defendants had not any permanent right of occupancy in the lands in question before the commencement of Madras Act I of 1908, they obtained a permanent right of occupancy in the holding by the operation of section 6, sub-section (1), as amended by section 3 of Madras Act IV of 1909, and the suit was rightly dismissed by the Civil Court.

17. The effect of section 6, sub-section (1) of Madras Act I of 1908 as amended by section 3 of Madras Act IV of 1909, came before the High Court of Madras in *Govinda Parma Guruva v. Bothas Dandasi Pradhanu*² In that case the land-lord had before the 1st July, 1908, obtained a decree for possession of *ryoti* land against the

occupiers who were in possession on the 1st July, 1908, and Benson and Sankaran Nair, JJ., rightly held that :-

18. It is immaterial that a decree for a possession had been already passed. We must therefore, hold that the defendants are *ryots* with a permanent right of occupancy".

19. See also *G. Kanakayya v. Janardha Padhi*³

20. This appeal fails. Their Lordships will humbly advise His Majesty that this appeal should be dismissed. As the respondents have not appeared there will be no order as to the costs of this appeal.

Appeal dismissed.

Cases Referred.

1. [1869] 3 N.W.P. 203
2. [1910] 20 M.L.J.528 : 7 I.C.74 : 1910 M.W.N.331,
3. [1913] 36 Mad. 439 : 8 I.C.736 : 21 M.L.J.31 : 1910 M.W.N. 841.