Sri Athmanathaswami Devasthanam

Vs

K. Gopalaswami Aiyangar

Civil Appeal No. 70 of 1961

(K. Subha Rao, Raghuvar Dayal, J. M. Mudholkar JJ)

09.05.1963

JUDGMENT

RAGHUBAR DAYAL J. –

This appeal is by certificate granted by the High Court of Madras under Art. 133(1)(a) of the Constitution.

The appellant, Sri Athmanathaswami Devasthanam, of Avidayarkoil in Tanjore District, represented by hereditary trustee Subrahmanya Pandara Sannadhi Atheena Karthar of Thiruvavaduthurai Atheenam, hereinafter called the Devasthanam, is the landholder of three villages. It sued the respondent for the recovery of a sum of Rs. 11,415/8/6 as damages for use and occupation of the lands in suit for Faslis 1357 to 1360 at Rs. 3/9/0 per acre per annum. The respondent was let into possession of the land by a previous trustee of the Devasthanam in August 1944 when he was being pressed by the State authorities for reclaiming the land and putting it to cultivation in connection with the Grow More Food Campaign launched by the Government of the country during World War II. The total land in all the three villages let out to the respondent was about 727 acres. The plaintiff contended, inter-alia that the lands in suit were private iruvaram lands and not ryoti lands, that the transaction by which the respondent was let into possession was not binding on the present trustee inasmuch as it had not been entered into after obtaining the permission of the Hindu Religious Endowments Board under s. 76 of the Madras Hindu Religious Endowments Act, 1927 (II of 1927), and that therefore the respondent was a trespasser. The respondent on the other hand, contended that the suit lands were ryoti lands, that in view of his being let into possession by the previous trustee he acquired the statues of a ryot under s. 3 (15) of the Madras Estates Land Act (I of 1908) and also acquired permanent rights of occupancy under s. 6 of the said Act, that the transaction by which he was let into possession did not amount to an alienation and did not come within the purview of s. 76 of the Endowments Act. He further contended that he was not in arrears of rent, that he had paid rents up to Fasli 1356 and there was a real understanding that the realisation of rent would be waived so long as the Government waived its right to water cess and that the Government having waived water cess till the end of Fasli 1360, he was not liable to pay any rent till the end of the Fasli year. It was also contended that the suit lands being ryoti, and the defendant being a ryot, the suit was not maintainable in the Civil Court.

Both the Trial Court and the High Court have found that the suit lands are ryoti lands. They differed about the nature of the transaction by which the respondent was let into possession. The Trial Court held it to be an alienation by way of a permanent lease and so invalid in view of absence of consent of the Hindu Religious Endowments Board. The High Court, on the other hand, held that the transaction did not amount to an alienation of trust-property, that no sanction of the Board was

necessary and that therefore the letting of the land to the respondent was valid. Disagreeing with the trial Court, the High Court also found that the suit could be instituted only in the Revenue Court and that the Civil Court had no jurisdiction to entertain it. The High Court therefore set aside the decree which the Trial Court had passed and ordered the return of the plaint to the plaintiff-appellant for presentation to the proper Court. The High Court further dismissed the cross-objection filed by the plaintiff-appellant with respect to the Trial Court's allowing credit of a payment of Rs. 1,000/- towards rent of damages due from the defendant-respondent. It is against this order that the appellant has filed the present appeal.

Learned counsel for the appellant challenged the correctness of the finding that the land in suit was ryoti land on grounds that part of the land was tank land and the rest not cultivable and therefore most of the land in suit did not come within the definition of 'ryoti land' in s. 3(16) of the Estates Land Act which reads :

> "'Ryoti land' means cultivate land in an estate other than private land but does not include -
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> (a) beds and bunds of tanks and of supply, drainage surplus or irrigation channels;
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> (b) threshing-floor, cattle-stands, village-sites, and other lands situated in any estates 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."

It was not alleged by the appellant in its plaint or at any stage of the proceedings in the Trial Court that part of the land in suit consisted of beds of tanks and therefore did not come within the definition of ryoti land. We do not consider it fair to allow this fresh contention, relating to a question of fact to be raised at this stage, even though in some of the records of rights certain land is described as 'puramboke'.

The lands in suit, according to the plaint, were uncultivable waste lands covered with shrubs, jungle and the like. They had not been cultivated for a long time. Waste lands covered with shrubs, jungle and the like cannot be held to be uncultivable merely on that account or on account of their being not cultivated for a long time. Land which can be brought under cultivation is cultivable land unless some provision of law provides for holding it otherwise in certain circumstances. This is not disputed for the appellant, but what is urged on its behalf, is that land will not be cultivable land if it can be brought under cultivation only after incurring great expenditure. It is said that according to the respondent, about Rs. 3,00,000/- were spent in reclaiming the land. Except for the statement of the respondent, there is no evidence worth considering about the actual expenditure incurred by the respondent in reclaiming the land in suit which is over 700 acres in area. Reference was also made to an observation in the judgment of the High Court to the effect :

> "Of course, there are some lands in an estate which are not cultivable at all like hill tops, permanently submerged lands, etc., and they will be incapable of being claimed as ryoti land with occupancy rights by lessees for grazing, fishing etc."

This observation seems to be a general observations and not in connection with the land in suit. The land in suit was sought to be brought under cultivation in connection with the Grow More Food

Campaign and this must have been as the land in suit could be brought under cultivation without any undue expenditure of money and labour. The expenditure on reclaiming the land might have been more than the usual expenses in view of the fact that most of the labour had to be imported from outside and as tractors had to be used on account of the large size of the land to be reclaimed within as short a time as possible. It is not even shown that the reclamation of land has not been profitable financially. We are therefore of the opinion that the Courts below have rightly held the land in suit to be cultivated land.

The other point made by the appellant is against the finding that the respondent is a ryot. Ryot is defined in s. 3(15) of the Act and means a person who holds for the purpose of agriculture ryoti land in a estate on condition of paying to the landholder the rent which is legally due upon it. The contention is that the respondent alleged that no rent was payable and that in view of this assertion the respondent would not be a ryot as he holds land without any condition of paying rent to the landholder. The contention is not factually correct. The respondent made no such definite statement in either the written statement or in his evidence which would indicate that he completely disowned his liability to pay rent. We have been referred to certain statements in the written statement. They only show that there was some dispute about the rate of rent to be paid and not about the liability to rent. In paragraph 4 of the written statement it was said "at that time the actual cash rent which was to be paid was not fixed but the defendant orally requested and was promised remission of rent as long as Government remitted water charges in this area on concessional rates of rent for some years thereafter, in view of the heavy reclamation expenses."

Again, in paragraph 7 it was said "the defendant at no time had agreed to the rate fixed by the trustee and had several times protested against it also." In paragraph 20 the defendant said :

> "The allegation in paragraph 4 of the plaint that the defendant agreed to the rate of rent at Rs. 3/9/0 per acre and then entered into possession is altogether wrong... Far from the defendant agreeing to the said rate, the defendant both orally and in writing then and on every available opportunity thereafter has been protesting against the exorbitant rate, arbitrarily and unilaterally fixed by the trustee swayed by extraneous considerations. The defendant had also informed the trustee that if only the defendant was granted the patta which was promised to him and to which he was entitled in law, he would take the matter to the collector for fixing a fair rent. He also took care to add that unless and until a patta was issued to him, no rent would begin to accrue."
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> Lastly, in paragraph 26, it was stated "no rent was agreed to by the defendant and the rent originally fixed by the late trustee was later abandoned by him. Hence until the rent was fixed by agreement or by the Collector, no claim for rent is sustainable."

All these statements are against the appellant's contention that the respondent asserted that he was not liable to pay rent.

In his deposition the respondent said :

> "I did not agree to pay Rs. 3/9/0 per acre because I thought it was high... In 1949 there was a demand by the temple manager for two faslis, i.e., Rs. 6,000. I told him that he should consult the Pandarasannidhi about it and that I was not going to pay anything as rent. I do not remember if I sent another letter to Pandarasannidhi about this matter. The demand sent to me by the Revenue Inspector in 1950 is Exhibit B-

> 21. That related to rent due by me for kudikani lands in my possession. I did not pay it but I entered into correspondence with the Revenue Divisional Officer. But nothing more was heard about it."

These statements too do not make out that the respondent disclaimed liability to pay rent. Whenever he refused to pay rent it was for reasons other than absence of a liability to pay rent.

There is ample material on the record to show that the respondent was liable to pay rent for the land given to him for cultivation. Exhibit A-3 is the order of the Pandarasannidhi for granting patta to the respondent of the land belonging to Avadiyarkoil Temple. The very first term mentioned in this order is that the applicant, i.e., the respondent, must pay cash rent at such rates as may be determined by the Pandarasannidhi.

We therefore do not see any force in the contention that the respondent is not a ryot as defined in the Act.

The next contention for the appellant is that the lease of the land in favour of the respondent is invalid in view of the provisions of s. 76 of the Endowments Act as the Board had not sanctioned the lease. Sub-section (1) of s. 76 reads :

> "76(1) No exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to any math or temple shall be valid or operative unless it is necessary or beneficial to the math or temple and is sanctioned by the Board in the case of maths and excepted temples and by the committee in the case of other temples."

The order for the grant of patta to the respondent did not fix any period for which it was granted. It is urged for the appellant that the lease must be taken to be for a period exceeding 5 years, as in pursuance of the provisions of s. 6(1) of the Act, the respondent secured permanent right of occupancy in his holding. Such permanent right of occupancy is not conferred on the appellant on account of the term fixed in the lease. Such right is conferred by the Act on any person who is admitted by a land-holder to the possession of ryoti land. The mere admission of a ryot to the possession of ryoti land by the landholder gives that ryot the permanent right of occupancy in view of the statutory provisions of s. 6. If the Pandarasannidhi had only admitted the respondent to the ryoti land for a period less than five years, even then the result would have been that the respondent would have acquired a permanent right of occupancy in his holding. We are of opinion that the mere fact that s. 6 of the Act confers such a right on a person admitted to a ryoti land, does not make the letting of the land to such a person equivalent to the grant of a lease to him for a term exceeding 5 years, and as such requiring the previous sanction of the Board. If it be held otherwise, the result would be that either the Pandarasannidhi will have to obtain the sanction of the Board for every proposed letting of land of whatever area, or not to exercise his ordinary duties of letting the as a trustee. The provisions of s. 76 could not have been intended to put such a restriction on the exercise of his ordinary rights by the Pandarasannidhi. It is too much to expect that the combined effect of s. 76 of the Endowments Act and s. 6 of the Estates Land Act is that there be no more letting of land belonging to a temple by the Pandarasannidhi. We hold that the letting of the land to the respondent did not amount to the leasing of the land to him for a term exceeding 5 years and that therefore required no sanction of the Board and that the letting of the land to the respondent is valid and good in law.

The respondent being a ryot, a suit for the recovery of rent and ejectment is not cognizable by a Civil Court, in view of the provisions of s. 189 of the Act. Sub-section (1) of s. 189 reads :

> "189(1). A District Collector or Collector hearing suits or applications of the nature specified in Parts A and B of the Schedule and the Board of Revenue or the District Collector exercising appellate or revisional jurisdiction therefrom shall hear and determine such suits or applications or exercise such jurisdiction as a Revenue Court.
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> 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."

Suits by a landholder to recover arrears of rent and to eject a ryot are triable by a Collector, vide entries at serial Nos. 3 and 11, Part A of the Schedule to the Act. Such suits cannot be taken cognizance of by a Civil Court in view of second paragraph of s. 189(1). The High Court is right in holding that the Revenue Court alone has the jurisdiction over the suit and therefore in ordering the return of the plaint for presentation to the proper court.

The last point urged is that when the Civil Court had no jurisdiction over the suit, the High Court could not have dealt with the cross-objection filed by the appellant with respect to the adjustment of certain amount paid by the respondent. This contention is correct. When the Court had no jurisdiction over the subject matter of the suit it cannot decide any question on merits. It can simply decide on the question of jurisdiction and coming to the conclusion that it had no jurisdiction over the matter had to return the plaint.

We therefore dismiss the appeal except in so far as it relates to the order of the High Court on the cross-objection filed by the appellant. We set aside the order dismissing the cross-objection. We order the appellants to pay the costs of the respondent throughout.

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