Privy Council Appeal No. 61 *of* 1921

(*formerly Privy Council Appeal No.* 112 *of* 1918).

Radhakrishna Ayyar and another - - - - - *Appellants*

v.

Sundaraswamier, substituted for Swaminatha Ayyar - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH MARCH, 1922.

Present at the Hearing:

VISCOUNT CAVE.
LORD SHAW.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

This is an appeal against a decree of the High Court of Judicature at Madras dated the 14th November, 1916. It varied a decree of the District Judge of Tanjore dated the 18th January, 1915. The suit between the parties was brought in the Revenue Court of Kumbakonam under the Madras Estates Land Act, No. 1 of 1908, Section 77. The claim of the plaintiff was for rent said to have accrued and to be due by the defendants in respect of their holdings in accordance with the terms of a puttah which will be afterwards noted. No further reference is required to the various stages of the litigation.

A preliminary question, however, is raised as to whether the appeal is competent. It is pointed out by the respondent, who makes the objection, that the rent sued for amounted to Rs. 4,560, being rent for three years in arrear. The respondent accordingly contends that it sufficiently appears that the amount

or value of the subject-matter of the suit is not Rs. 10,000, as required by Sections 109 and 110 of the Code of Civil Procedure, 1908; and upon the case reaching this Board their Lordships, on the 3rd December, 1920, held that the certificate *quoad* value was at least ambiguous, and that such certificates "ought to be given in such a form that it is impossible to mistake their meaning on their face."

The only order then before the Board was in these terms :—

> "It is hereby certified that as regards the value of the subject-matter and the nature of the question involved the case fulfils the requirements of Sections 109 and 110 of the Code of Civil Procedure, and that the case is a fit one for appeal to His Majesty in Council,"

and upon that the previous judgment of the Board proceeded. It now appears, however, that the above was not the only order, and that the parties had failed to bring up the order embracing the actual certificate and granted on the same day.

It is admitted by both parties that there did exist in the proceedings an order of the 21st September, 1917, in the following terms :—

> "We hold that the subject-matter is of a value greater than Rs. 10,000, with reference to *Gooroopersad Khond* v. *Juggut Chunder* (VIII. M.I.A. p. 166), and that a substantial question of law is involved. We therefore certify that the case is a fit one for appeal to His Majesty in Council with reference to Sections 109 and 110 of the Civil Procedure Code."

In their Lordships' opinion, this certificate is sufficiently clear, and is not open to the objections under which the former certificate under argument before the Board stood condemned.

The point, however, which still remains is whether that certificate must be accepted by the Board as conclusive, the actual sum in figures which is sued for being what it is, and so much smaller than Rs. 10,000.

The ruling provision as to certificates of value was No. 2 of the schedule to the Order in Council of the 10th April, 1838. It is to the following effect :—

> "That in all cases in which any of such courts shall admit an appeal to Her Majesty, her heirs and successors, in Council, it shall specially certify on the proceedings that the value of the matter in dispute in such appeal amounts to the sum of 10,000 company's rupees or upwards, which certificate shall be deemed conclusive of the fact, and not be liable to be questioned on such appeal by any party to the suit appealed."

It is admitted that at the date of the appeal this Order was in operation, and it accordingly governs the case; and, so far as the Board is concerned, it concludes the question of competency *quoad* value. In some of the cases which have occurred, it would rather appear as if the provisions of this Order had been left out of view.

On a date subsequent to the filing of this appeal, namely, the 9th February, 1920, the Order was repealed by an Order in Council, passed by His Majesty on the date mentioned. While, however, in cases subsequent to that date, the value of the subject-matter of the appeal is not concluded by the certificate of the Court

below, their Lordships desire to make these two observations :— In the first place, the sum of money actually at stake may not represent the true value. The proceeding may, in many cases, such as a suit for an instalment of rent or under a contract, raise the entire question of the contract relations between the parties and that question may, settled one way or the other, affect a much greater value, and its determination may govern rights and liabilities of a value beyond the limit (*Banarsi Parshad* v. *Kashi Krishna Narain and another* (L.R. 28 I A., p. 11)). The Courts below may accordingly with propriety, as was done in this case, make the necessary certificate. In the second place, whether they did so or not, while their Lordships would, of course, be free, if greater value in the sense mentioned were established, to proceed with the appeal, yet they will always naturally and very greatly defer, on a subject of this nature, to the certificate given by the High Court.

The objection to the competency of the appeal is accordingly repelled.

Their Lordships proceed to the merits of the appeal.

The original plaintiff in the suit was a Receiver appointed by the Court and the plaintiff-respondent is his successor and represents the proprietors of an inam village called Kadiramangalam. It is matter of admission that the appellants are occupancy ryots of certain of the village lands, having the permanency of tenure and the other rights attaching to that position under the law of Madras. Their Lordships desire to make it clear that nothing that has passed between these litigants during the long course of years, in which the law has been so frequently invoked, constitutes a derogation from the status, privileges, rights and obligations of parties under the Madras Land Acts. The provisions, for instance, of Chapter 5 of the Act as to the payment of arrears of rent, and the appraisement and division of produce, as also those of Chapter 4, dealing with puttahs and muchilkas, can be appealed to and are plainly applicable.

In particular, it should be noted that Chapter 4 of the Act as is specially provided for by Section 50, applies to all ryots with a permanent right of occupancy, and by Section 52 accordingly puttahs and muchilkas may be exchanged for periods of one or more revenue years ; but no landholder shall be bound to tender, and no ryot to accept, a puttah for a period of more than one revenue year. It appeared to be maintained for the appellants that payments made during the course of 20 years should form the lines and limits of the ryots' obligations for all time. Setting aside the manifest contradiction by this of the actual relations of these parties, the Board has, in view of the argument, thought it right to express its opinion that the statutory rights and obligations of parties have not been thus impinged upon. Past practice may, of course, have its weight as one of the elements which are considered in fixing under the Act what are the fair and equitable conditions of a particular puttah (*Sri Raja Parthasarathi*

Appa Row Savaiaswa Row Bahadur Zemindar Garu v. *Chevendra Venkata Narasayya and others* (37 I.A., 110)).

Under the Madras Estates Act I of 1908, the inamdar, on the 28th October, 1908, tendered a puttah for Fasli 1318 to the tenants and demanded from them a muchilka, but the tenants refused to accept the puttah, or to execute a muchilka. Puttahs, in identical terms having been also offered and refused, and no muchilkas having been executed for the two following years, Fasli 1319 and 1320, the suit was instituted on the 15th December, 1911. It resulted in a decree for Rs. 4367 7 3.

It may be stated that it was admitted that there had been numerous suits and numerous decrees in which the rights of the inamdar had been determined in accordance with puttahs substantially, if not entirely, in the same terms as those tendered in the present suit. The plaint correctly states: "Puttahs were tendered for the under mentioned occupancy right lands in the enjoyment of the defendants for Faslis 1318, 1319, and 1320, duly according to custom and in conformity with the previous judgments, by the first defendant in O.S. No. 61 of 1904, who was managing during the said Faslis."

In 1902, the inamdar had sued and on the 19th April, 1904, the Divisional Officer pronounced judgment in the plaintiff's favour, and he expressed himself thus :—

> "I consider that the dispute between the parties relating to the suit Fasli is identical with those decided in the previous Faslis in the judgments referred to above, and that no special pleas or circumstances are urged with reference to the suit Fasli for any fresh adjudication."

Their Lordships pause to say that they may repeat in terms this dictum which was pronounced 18 years ago. It is a truly deplorable circumstance that judicial time should have been occupied and the substance of parties wasted by litigation over a further period of 18 years, for settling practically the same point. The careful provisions made by legislation for the steady protection from year to year of the rights of occupancy ryots on the one and, and inamdars and other landlords on the other, have been put on one side and fruitless and repeated litigations have been indulged in.

But in the judgment referred to, the Divisional Officer proceeds :—

> "I therefore find that the previous judgments are *res judicata* in these suits as they have gone fully into the question of custom relating to the different stipulations in the puttah."

However natural it may have been to treat the position thus, their Lordships cannot sustain on legal grounds the plea of *res judicata* here suggested. In the language of the High Court :—

> "The answer is that the general doctrine of *res judicata* is not in question, but the application of the special rule stated in Section 52 (3), Estates Land Act, under which muchilikas decreed for any revenue year remain in force until the beginning of the year, for which fresh ones are exchanged or decreed,

and that there is no reason for restricting the scope of the general reference to muchilikas decreed to those decreed by any particular description of Court."

With this view the Board is in full agreement.

The inamdar having again tendered puttahs in terms of Section 54 and the other relative sections, and the tenants having notwithstanding previous decrees again refused to accept the terms or to grant muchilkas, and the terms of the puttahs having been entirely approved by the Collector, the present suit had to be brought. The puttahs tendered are in terms of previous puttahs upon which judgment and decree was passed. It stands to reason, and it is in accordance with Sections 27 and 28, that the old rent thus decreed shall continue, until reduced or enhanced by special applications under the statute. No such applications have been made. All that remains in the case is the correct interpretation of the puttahs.

The argument presented to the Board involved the construction of the two Clauses 1 and 8. These clauses are as follows :—

"1. Out of the 32 *pangus* in the aforesaid village, the lands comprised in the $\frac{8}{8}$ pangu which is in your enjoyment, *viz.*, *Ayan* nanja of the extent of 2 Velis 3 Mahs 4 Kulis and 13 cents and *Padugai punja* nanja of the extent of 5 Mahs 38 Kulis and 59 cents, in all, nanja of the extent of 2 Velis 8 Mahs 43 Kulis and 8 cents, you shall cultivate at the proper seasons fertilizing them in all ways; harvest the crops that are grown, after the same have been estimated by our agents in the presence of (our) agents and others and under their orders and supervision, leaving the stubbles as is the practice with the Government *Amani* lands: stock in heaps on the threshing-floor the residue of the total yield of paddy that is left after paying the reapers' wages at the rate of $\frac{1}{2}$ marakal per kalam and the *Thalaiyari Suvandiram* paddy payable at the threshing-floor at the rate of 1 marakal per 15 kalams; and after the harvesting has been completed, you shall apportion in heaps our *Melvaram* due at the rate of 60 kalams for 100 kalams of paddy in the case of *Ayan* nanja and at the rate of 57 kalams for 100 kalams in the case of *Padugai punja* nanja under the Sudder Court decree in Suit No. 68 of 1847 and in acknowledgment of our having received the Melvaram paddy, obtain a receipt from our agents."

"8. Even if the aforesaid nanja lands be not cultivated at the proper seasons, even if they be cultivated negligently, if they be allowed to lie fallow without being cultivated, even if damage of crops be caused by failure to harvest the crops at the right time, even if the yield be carried away, either without acting in accordance with the conditions specified in paragraph 1 herein, or without division of Varam and even if nanja land be filled up (and raised in level) and punja cultivation made thereon, you shall pay at the rate specified in paragraph 1 herein our Melvaram paddy in respect of the total yield of paddy calculated at an average of 170 kalams and 4 marakals per veli of nanja, the kadappu and kar produce being payable within the 15th of December, and the samba and pisanam produce by the 15th March."

What had happened in the present case was that during the Fasli years in question, the tenants in contravention of the terms of these puttahs had carried away the yield, without any of the proceedings with regard to the apportionment, in heaps, of the melvaram due to the landlord, having taken place.

The obligations under Clause 1 having thus not been complied with, Clause 8 came into operation, which applied to various contingencies, including the following: "If the yield be carried away . . . without acting in accordance with the conditions specified in paragraph 1." In that contingency "you shall pay at the rate specified in paragraph 1 herein our melvaram paddy in respect of the total yield of paddy calculated at an average of 170 kalams and 4 marakals per veli of nanja, the kadappu and kar produce being payable within the 15th of December, and the samba and pisanam produce by the 15th of March."

The question is: In this stipulation, what is the meaning of the expression "the total yield of paddy"; and in particular what is the application of the stipulation to the case of an oodu crop, that is a crop sown together, one part of which takes only 3 months to ripen and be reaped, and another part of which takes eight months to ripen and be reaped? Is the return as to "the total yield of paddy" satisfied by payment of 170 kalams for the total yield of one of the portions. The appellants maintain that it is.

It is well to have clearly in view what is the practice with regard to such a paddy crop. It is thus described in Mr. Hemingway's work on Tanjore in the Madras District Gazetteer, p. 93.

> "It has become usual in a good many places to mix a *kuruvai* and a *samba* crop on what is called the *udu* or *ottadan* system of cultivation. The species of samba used is the *ottadai* paddy, an eight months' crop from which the name of the system is derived. The amount of *kuruvai* used in this combination exceeds the *samba* largely, sometimes by as much as five to one. *Ottadai* is generally sown in the first-crop season. The more quickly matured variety is harvested first, and the ryot thereby secures a return for his labour both at the *kuruvai* and the samba harvests. The two kinds of grain are mixed in the seed-beds and the seedlings are planted indiscriminately."

The appellants' counsel forcibly maintain that the payment of 170 kalams was a penal provision, and that, therefore, that provision ought to be most strictly construed.

It must not be forgotten that even in regard to penal provisions with a strict construction, no construction is open to a Court of Law which is in violation of what that Court considers to be the true meaning of the provision. That is a sound general principle.

But the Board, having considered the argument upon the clause, are of opinion that the rent of 170 kalams was not a penal rent, but was a substituted rent. The true rent, had the tenants complied with their obligations, would have been a percentage of the yield: but were the harvest to be bodily carried away, it was necessary to provide for such a case, and this was done by Clause 8 which imposed no penalty as such, but simply set forth a figure which, upon the whole, might be reckoned a reasonable pactional substitute for the actual percentage, which, owing to the tenants' conduct, had been rendered unascertainable.

Is, however, the stipulation applicable to the whole harvest of a mixed crop reaped at separate times, or is it applicable only

to the first harvesting? "You shall pay," says Clause 8, "at the rate specified in paragraph 1 in respect of the total yield of paddy calculated at an average of 170 kalams": but then it is added that the early rice (kadappu kur) produce is payable in December and the samba, which is the late harvest produce, is payable in March. Putting that alongside of the subsequent obligation which was, under Clause 1, "to stock in heaps on the threshing-floor the residue of the *total yield of paddy*" (the same phrase as is used in Clause 8), their Lordships have no doubt that the substituted rent applied to the yield of each portion of the crop, exactly as the setting aside on the threshing-floor was applicable to each portion. They are of opinion that the High Court has come to a correct conclusion upon this topic.

Their Lordships desire to add that a question of straw, insignificant in amount, was not argued, the very proper arrangement of both parties at the Bar being that that would stand or fall with the judgment of the Court below.

Their Lordships will humbly advise His Majesty that the appeal be refused with costs.

In the Privy Council.

RADHAKRISHNA AYYAR AND ANOTHER

v.

SUNDARASWAMIER, SUBSTITUTED FOR SWAMINATHA AYYAR.

DELIVERED BY LORD SHAW.

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