

Rajah Saheb Moharbon Dostan Sri Raja Rao Venkata Kumara Mahipathi Surya Rao Bahadur Garu, Maharajah of Pithapuram Vs. Kunjam Konayya and ors.

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Court : Chennai

Decided On : Sep-11-1945

Reported in : AIR1946Mad93; (1945)2MLJ469

Appellant : Rajah Saheb Moharbon Dostan Sri Raja Rao Venkata Kumara Mahipathi Surya Rao Bahadur Garu, Maharajah

Respondent : Kunjam Konayya and ors.

Judgement :

Rajamannar, J.

1. Three out of four plots comprised in a holding were purchased by the appellant (plaintiff) in sales for recovery of arrears of rent due to him as the landholder. He brought a suit for recovery of arrears of rent for subsequent faslis 1349, 1350 and 1351 against the first defendant who was the registered pattadar, and against the second defendant as the person in actual occupation. The first defendant died when the matter was in appeal in the District Court and respondents 3 to 7 in the lower appellate Court were brought on record as his legal representatives. The Deputy Collector decreed the suits except in regard to the period between the dates of the sales in which the appellant himself had become the purchaser of the three plots and the dates on which he took delivery of them. He also directed, in view of the fact that the first defendant was not the actual enjoyer of the suit land, that the suit holding should be proceeded against in the first instance and the first defendant personally, last. The plaintiff appealed, but the learned District Judge dismissed this appeal.

2. In second appeal Mr. Raghava Rao for the appellant urged two points. The first is that the lower Courts erred in disallowing the rent for the period between the dates of sale and the dates of delivery. The lower Courts apparently were of the opinion that after the rent sales, the defendants could not be considered to be ryots and the sum due to the landholder from them will not amount to rent and therefore could not be the subject-matter of a suit under Section 77 of the Madras Estates Land Act. No doubt in a sense this may be true and after the sales, the persons in occupation would be technically trespassers. Nevertheless, by reason of the provisions of Section 163 of the Act, the landholder will be entitled to recover an amount equal to the rent in respect of the plots from the persons in occupation in a suit under Section 77 because such an amount could under Section 163 be recovered as if the amount was an arrear of rent. The decision of King, J., in *Mangamma v. Maharajah of Pithapuram* (1944) 1 M.L.J. 205 is direct authority for this position. The District Judge was wrong therefore in disallowing the plaintiff's claim in respect of this period.

3. The second point urged for the appellant was that the first defendant and his legal representatives should have been made primarily liable because the first defendant was the registered pattadar. But it follows from what I have said before, that the relationship between the first defendant and the plaintiff-appellant ceased to be the relationship between a ryot and a landholder from the date of the rent sales. Thereafter the first defendant had no legal status as a ryot, nor therefore any legal liability as a ryot. It was not apparently disputed in any seriousness that the actual enjoyer was the second defendant. The trial Court definitely found so and the District Judge has not disagreed with that finding. The plaintiff would therefore be entitled to recover the amount due to him as rent for the period subsequent to the rent sales from the holding and the second defendant.

4. The second appeal is dismissed with costs as against the contesting respondents and will be allowed with costs throughout, as against the first respondent (2nd defendant). The trial Court will determine the rent payable in respect of the three plots in suit and pass a decree for the amount found due against the second defendant.

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