(Kuruganti) Sivaramiyya and ors. Vs. Rajah of Venkatagiri and ors.

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Court : Chennai

Decided On : May-02-1929

Reported in : AIR1929Mad339a

Appellant : (Kuruganti) Sivaramiyya and ors.

Respondent : Rajah of Venkatagiri and ors.

Judgement :

Anantakrishna Iyer, J.

1. The Rajah of Venkatagiri instituted O.S. No. 51 of 1923, on the file of the Additional District Munsiff's Court of Ongole, to recover jodi and some other dues from the defendants who are agraharamdars of Konagarivari Palem alias Bodapalem agraharam. The main question in dispute so far as this second appeal is concerned is whether the plaintiff is entitled to recover jodi at the rate of Rs. 173 per fasli, or whether he is entitled to recover only at the rate of Rs. 17-8-0. Both the lower Courts upheld the plaintiff's claim to recover at the higher rates and the defendants have preferred this second appeal.

2. The facts in connexion with this matter are not in dispute. From Ex. 1, which is a copy of the Sannad granted to the predecessors-in-title of the defendants, i.e., to the original agraharamdars in 1721, it is seen that the jodi payable was Rs. 17-8-0. It has also been found by both the lower Courts that even from a period prior to 1802, the date of Ex. B, the Rajah of Venkatagiri has been collecting from the agraharamdar jodi at the rate of Rs. 173 per fasli. The question for decision, therefore, as stated by the lower appellate Court is:

Whether having regard to the admitted fact that for over a century the defendants and the predecessors-in-title have been paying jodi at a far higher rate than that fixed under the Sannad Ex. 1, they are not barred from questioning the Raja's right to collect jodi at the rate of Rs. 173 as stipulated in Ex. B of 1802.

3. The lower appellate Court, after referring to the decision of Privy Council reported in Secy, of State v. Rajah of Venkatagiri A.I.R. 1922 P.C.168 remarked that the settlement of the Venkatagiri zamindari did not come within the purview of Madras Regn. 25 of 1802 and held that from the long and uniform course of payment of jodi at rate of Rs. 173 per fasli for more than 100 years it was entitled to presume that there was a valid agreement between the parties to pay at the rate, and that it was prepared to presume a lawful origin for such practice and was prepared also to presume that the agreement was supported by consideration.

4. Before me the learned advocate for the appellants (defendants), while admitting

that it was open to Courts to presume a lawful origin in support of existing practice (if there be no legal impediment for such presumption) contends that in the present case the jodi fixed at the time of the grant of the agraharam in 1721 being known to be five pagodas (Rs. 17-8-0.)-see Ex. 1,-notwithstanding the subsequent payment for a long period of a higher rate the rule of presumption referred to by the lower Courts, could not be applied to the present case. It is only, he argued, when nothing else was proved, that the presumption of a legal origin could be made and because in this case the original amount of jodi fixed in 1721 is known, the rule of presumption referred to has no application in the present case. I am unable to accept this argument. It is a question of fact in each case depending upon presumed contract whether She Court responsible for recording finding of fact would in the circumstances find a legal origin or not in support in such a case. If there be other circumstances such Court is bound to have regard to the other circumstances also.. Here both the lower Courts have paid due regard to the circumstance that under Ex. 1 of 1721, the amount of jodi payable is only Rs. 17-8-0; they have also had due regard to the circumstance that for over a century the agraharamdars have been paying the Rajah jodi at the rate of Rs. 173 a year. With these items of evidence before them, they were bound to come to a conclusion as to the proper amounts of jodi payable by the agraharamdars at present. The have come to the conclusion that the proper amount payable is Rs. 173 a year, and that a legal origin should be attributed to the practice which has been prevailing for over a century and, and they have presumed the existence of an agreement between the parties after 1721 and also presumed that the said agreement was supported by consideration and was valid and binding on the parties. I think it was quite open to them to come to such a finding and that sitting in second appeal it is not open to me to say that the finding is vitiated in law.

5. The lower appellate Court relied on the decision of the Full Bench of the Madras High Court reported in Peria Karuppa Mukkandan v. Raja Rajeshwara Sethupathi [1919] 42 Mad. 475. The learned Judges who took part in that case were not all agreed in their opinions Sir John Wallis, C.J., observed at p. 486 as follows:

The question... is, whether the Court can infer consideration for a contract to pay rent at an enhanced rate solely 'from a long continued course of payment of the enhanced rate. My answer is that it may if that is the sole fact it has to go upon, but that, in-dealing with the question of presuming the agreement and the consideration therefor that together make up a contract, the Court should not be governed by that fact alone but should come to a conclusion on all the circumstances of the case.

Coutts Trotter, J.,

6. (as he then was) at p. 490 observed as follows:

A Court with nothing before it but the fact of a long continued payment by a tenant would be amply justified in presuming a legal origin for that payment. But the word 'enhanced' clearly carries an implication of a further fact viz., that the tenant had previously paid a lower rent than that sought to be enforced.... For a Court to infer consideration from a long continued course of payment is a totally different thing when that is the sole fact before it, and when it is complicated by other considerations as in this case. In the latter event it comes in effect to a balancing of probabilities; and no Court should, in my opinion, presume consideration passing from the landlord, unless it thinks it inherently probable that consideration could and did exist in fact... The Court... should obviously pay the greatest attention to the fact

of the long continued payments of the enhanced rents by the tenants: it is no light matter to over set a state of things which has existed without question for a long period of time.

7. And finally

if the continued payment of rent were the sole fact before the Court it would be entitled to presume consideration from it: but that if, as in the present case, there are other facts before the Court, it must refuse to treat the payment as raising a presumption, and, while giving it such weight as it thinks fit, perhaps a determining weight, treat it merely as a portion of the evidence in the case, subject to be weighed against and perhaps overtopped by the evidence on the other side.

8. Kumaraswami Sastri, J., in the same case says at p. 496.

The question referred to the Full Bench is whether the Court can infer consideration solely from a long continued course of payment of enhanced rent in cases where it is sought to base liability to pay enhanced rent on an alleged contract to pay it.... I am of opinion that it is open to the Court from a long and a uniform course of payment to presume that there was an agreement to pay which had a lawful origin and was supported by consideration where it is satisfied that it would be unreasonable from lapse of time or other circumstances to call upon the landlord to give direct evidence as to the terms and circumstances that gave rise to the payment and when circumstances exist which would render the drawing of the presumption reasonable in law and probable in fact. If all that appears is a long course of payment, I do not see why the presumption should not be drawn.

9. His Lordship referred to the principle that:

a legal origin should be presumed where there is a long continued assertion of a right to it if such a legal origin were possible and that in such cases Courts will presume that those acts were done and those circumstances, existed which were necessary to the creation of a valid title.

10. At p. 498 his Lordship refers to

the ordinary presumption which might well be raised that a person and his predecessor-in-title would not have paid for a series of years, more than what was payable, voluntarily and without any legal or binding obligation to do so.

11. It was, however, contended by the learned advocate for the appellant that the above principle should not be applied when we have in this case the fact that jodi payable in 1721 was only five pagodas, and he referred me to the judgment of Ayling and Seshagiri Ayyar, JJ. in the Full Bench case already referred to us supporting his contention. On behalf of the respondent it was, however, argued that certain passages at p. 489 of the report suggest that Ayling, J's. observations where limited to the circumstances that existed in that case, and that in any event the opinion of the majority of the learned Judges in the Full Bench case was in support of the view taken by the lower appellate Court in this case.

12. After having read the opinion delivered by the learned Judges in the Full Bench case Peria Karuppa Mukkandan v. Raja Rajeshwara Sethupathi [1919] 42 Mad. 475, I

think that the opinion of the majority of the Judges is in favour of the view contended for by the respondent in this case.

13. It is a well established principle of law that Courts would presume a legal origin where there has been a long continued enjoyment of a claim, if the claim could have had a legal commencement. It would be otiose to set forth at length authorities in support of the above principle.

14. The principle on which Courts have acted in such cases is this. Where there has been long continued possession in assertion of a right, the right, should be presumed to have had a legal origin, if such a legal origin was possible and this presumption applies even if the alleged right in its inception rests on a foundation invalid in point of law, and the Court will presume the performance, of all acts and the existence of all circumstances necessary to create a subsequent valid title, unless the subsequent enjoyment is shown to be more consistent with the illegal origin than with the legal origin. In Phillips v. Halliday [1891] A.C. 228 Lord Herschell observed as follows:

Why should the house or the Court refuse to presume, or abstain from presuming a legal title to this alleged right, which they would otherwise have presumed, because in its inception it may be shewn to have rested upon a foundation which would not support it? Why does not the doctrine which I have referred to, the maxim which has been so often acted upon, apply just as well as to the acts necessary to confirm a title originally invalid as to the acts necessary to create a valid title in the first instance? It seems to me that the argument of the learned Counsel for the appellants must go this length, that for however many centuries it may be proved that an alleged right has been asserted and enjoyed, if it can be shewn in its inception to have rested upon a foundation invalid in point of law, then, although the title might have been perfectly, well validated by some act which you would otherwise have presumed, you are never justified in presuming that act to have been done. My Lords, I am perfectly unable to, see upon what basis such a principle can rest. It seems to me that the very reason which has been hold not only to justify, but almost to compel, the Court to make presumptions of this description, applies just as much in the latter, case as in the former.

15. The appellants' learned advocate, however, relied on the opinion of Ayling, J., and Seshagiri Ayyar, J. in the Full Bench case in Peria Karuppa Mukkandan v. Raja Rajeswara Sethupathi [1919] 42 Mad. 475 and he also referred me to the decision of the house of Lords in Gann v. Free Fishers of Whitstable [1865] 11 H.L.C. 192. Gann's case [1865] 11 H.L.C. 192 was referred to by the Full Bench and I am of opinion that the opinion of the majority of the Full Bench is that the Court can presume a contract to pay the higher rate and a legal origin and consideration therefor from long continued payment of higher rate; and in this case both the lower Courts have considered the circumstance that in 1721 the jodi payable was only Rs, 17-8-0, and that for more than 100 years prior to the suit the agraharamdars have been paying jodi at Rs. 173 a year; they have in the circumstances come to the finding that the proper amount of jodi payable at present is Rs. 173 a year. I am of opinion that it was open to them to come to that conclusion and there is no legal impediment shown to me in the way of their finding accordingly.

16. In an unreported case (S.A. Nos. 443 to 446 of 1920). the High Court had to decide whether what was called 'ashtam sam' deduction i.e., deduction of 1/8th from the proper rent, was claimable by the ryots. The landlord had appealed to the High

Court complaining against such deduction in the patta. The District Court of Chingleput while allowing the 'ashtamsam' deduction, did not allow in favour of the landlord what was called 'nadikarasu.' The High Court (Ayling and Krishnan, JJ.), observed as follows in their judgment:

The 'Ashtamsam' deduction and the charges under the head of 'nadirkarasu' are all unexplained; but all have been given effect to for 50 years without question. We think, all should be treated on the same footing.

17. The High Court allowed 'ashtamsam' deduction in favour of the ryots, but allowed 'nadikarasu' in favour of the landlord. No doubt the judgment is very short and the question is not discussed in the judgment. But the decision of the High Court was in 1921, about two years after the decision of the Full Bench in Peria Karuppa Mukkandan v. Raja Rajeswara Sethupathi [1919] 42 Mad. 475.

18. I think the lower Courts were entitled to come to the conclusion that jodi at present payable is at the rate of Rs. 173 a year. I, therefore, dismiss the second appeal with costs.