Sri Sri Sri Brundavana Chandra Harishchandana Jagadduva Rajah Bahadur Vs. Pragada Rammayya and anr.

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Court : Chennai

Decided On : Mar-31-1914

Reported in : 25Ind.Cas.664

Judge : Tyabji and ;Spencer, JJ.

Appellant : Sri Sri Sri Brundavana Chandra Harishchandana Jagadduva Rajah Bahadur

Respondent : Pragada Rammayya and anr.

Judgement :

1. This appeal arises out of a suit for. ejectment. It is argued before us that the learned District Judge was wrong in proceeding on the basis that the 2nd defendant had occupancy rights in the lands from which the plaintiffs wish to eject him that there is no ground on which the 2nd, defendant could have been held to be a ryot under Section 3 (15) of the Madras Estates Land Act that assuming that the second defendant could have acquired the status of ryot, he has not been admitted as such by the landholder under Section 163 (1), and that in the event of any of these contentions being upheld the plaintiffs would be entitled to eject the 2nd defendant from the land.

2. All these arguments so far as the present appeal is concerned centre round one question: whether a person who is admitted into the possession of waste lands in 1884 can claim the rights and rely upon the presumptions in favour of ryots contained in the Estates Land Act.

3. Section 3 (15) of the Estates Land Act is in the following terms: Ryot' means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it.

4. It is argued that it does not apply because there is no condition for payment of rent accepted by the 1st or 2nd defendant. There is, however, an agreement to pay Re. 1 per acre (under Exhibit A). This payment has been evidently considered to have been by way of rent. It is not within our province to consider in second appeal whether or not the payment of this sum ought to be otherwise considered. But we feel difficulty in understanding under what other description it could have been held to fall.

5. Another ground taken in argument was that Section 6 of the Madras Estates Land Act cannot apply. For this purpose it was contended, first, that the grantor of Exhibit A was not a landholder as defined in Section 3 (15). The grantor was the first defendant. He traced his right from Exhibit N which refers to itself as a patta granted

as mokhasa. It is true that Exhibit M purported to be for an indefinite period and the grantor of Exhibit M was the widow of the zemindar who had herself only a life-interest and could, therefore, not have made a grant for a period extending beyond her life, Modhu Sudan Singh v. Rooke 25 C. 1 : 1 C.W.N. 433 : 24 I.A. 164. But, in our opinion, that does not affect the question whether it is a grant. During the continuance of Exhibit M no other person could have admitted any tenant into the land except the grantee under Exhibit M.

6. Secondly, it was contended that Section 6. could not apply because of the second subsection requiring (1) that the holder should be a landholder and (2) that the land should bean estate it may, therefore, be (so it was * argued) that the grantor may be a landholder, and that the land in question may not fall within the definition of an estate in Section 3 (2): that in such a case Section 6 would not apply. For this purpose it was argued that the land in question could fall only under Clause (c) of Section 3 (2) and that it was not a permanent under-tenure. This argument seems to us to be 'incapable of being supported. The clause that seems to us to apply is Clause (a). It was argued that Clause (a) could not apply, as if it is taken to include the land in question, it would imply that Clause (e) is unnecessary. We are unable to accede to this argument. Then it was argued that Clause (a) could not apply to parts of a zemindari. In this connection it is necessary to advert to the nature of the question with which we are now concerned. The question is whether a person in occupation is to be presumed to hold the land on such terms as tenants of zemindari lands generally hold them. That presumption is based on the well-recognised fact that the zemindar has primarily the right merely to collect the tax on the land and to retain a part of it, which part is now represented by the melvaram. The presumption arises from the history of land-tenures and of cultivation in the past and from the nature of the rights of the zemindar. Considered in this light the argument is deprived of all point. 'We are of opinion that Clause (a) is applicable.

7. Finally, it was argued before us that the case Cheelcati Zemindar v. Ranasooru Dkora 23 M. 318 is not applicable inasmuch as the decision in that case proceeds on the ground (page 322) that where the generality of tenants in the zemindari have occupancy rights it is a fair presumption to raise that newly admitted tenants are admitted on the same terms. It was argued that there is no evidence in this case that the generality of the tenants in the particular zemindari have rights of permanent occupancy. This argument omits to take into consideration the gist of the decision in Cheekati Zemindar v. llanasooru Dhora 23 M. 318. That decision establishes that by virtue of repeated proof of the fact that in zemindaris the prevailing terms of tenancy include the right of permanent occupancy in favour of the tenant, the Courts are in a position to take judicial notice of the existence of such terms and to presume that they exist. If as is suggested before us it is the case of the appellant that in the particular zenzindari in question the prevailing terms of tenancy do not include the right of permanent occupancy, it was for the appellant to have adduced evidence on the point. It is not. suggested that any such evidence was tendered and rejected. It is not even now stated to us that the appellant is desirous of adducing any such evidence.

8. In connection with the point with which we have last dealt, it was argued that the presumption referred to is not applicable inasmuch as the land was waste at the time of the original grant. Two circumstances may be alluded to in reference to this argument: first, if the presumption (based on conformity with general experience no less than on the policy of law and the history of land tenures) is that a ryot who comes

into possession of land ready for cultivation is let in on terms of permanent occupancy, then the presumption would be stronger in the case of one which is let in on the understanding that he will make lands cultivable which were previously incapable of being cultivated. In such a case principles of even wider applicability form the support of the presumption. The other consideration is the terms in which old waste is defined in Section 3 (7). The terms of that section are clearly inapplicable to the land in question. This had to be conceded when it was pointed out that under Section 3 (7) (i) land cannot be called old waste unless it is shown (a) that the land has been owned and possessed by the landholder or his predecessor-in-title for a continuous period of not less than ten years;

(b) that during the said period of ten years the, land has continuously remained uncultivated;

(c) that the said period consists of a period

(i) after 1908, or

(ii) partly before and partly after 1908, or

(iii) within 20 years before, the passing of the Act, i.e., since 1888.

9. It is the last requirement of the Clause (iii) as stated above that is fatal to the land now in question being considered waste. For though the land was uncultivated in 1874, it has been continuously in cultivation, since 1884. Hence it is clear that the land cannot be considered old, waste.

10. The result is that the appeal must be dismissed with costs.