Privy Council Appeal No. 104 *of* 1916.

Sreemanthu Raja Yerlagadda Mallikharjuna Prasad Nayudu Bahadur Zamindar Garu - - - - - - - *Appellant*

v.

Rajulapati Somaya and others - - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD DECEMBER, 1918.

Present at the Hearing:

LORD BUCKMASTER.
LORD DUNEDIN.
SIR JOHN EDGE.
SIR LAWRENCE JENKINS.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal from a decree, dated the 26th November, 1914, of the High Court at Madras, which affirmed a decree, dated the 22nd November, 1912, of the Subordinate Judge of Masulipatam, by which the suit had been dismissed.

The plaintiff is a zamindar, and he brought his suit on the 3rd of April, 1910, for a declaration that certain lands within his zamindari in the village of Ayyanki, in the Kistna District, of which the defendants were in possession, were his private lands within the meaning of the Madras Estates Land Act, 1908 (Madras Act I of 1908), in which the defendants had no right of occupancy; for the ejectment of the defendants from those lands, and for mesne profits. The defendants resisted the suit on the ground that the lands in question were ryoti lands within the meaning of the Act, and that they had in them rights of occupancy and were not liable to be ejected by the Civil Court.

As defined by Madras Act I of 1908, private land means:—

> "The domain or home-farm land of a landholder by whatever designation known such as *kambuttam, khas, sir* or *pannai*."

Ryot as defined by that Act means :—

" A person who holds for the purpose of agriculture ryoti land in an estate on condition of paying the landholder the rent which is legally due upon it."

Ryoti land as defined by that Act means :—

" Cultivable land in an estate other than private land, but does not include (*a*) tank-beds, (*b*) threshing floors, cattle-stands, village sites, and other lands situated in any village 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."

The lands in question do not satisfy the conditions mentioned in (*a*), (*b*) or (*c*), and are therefore not excluded from the statutory definition of *ryoti* land. They were cultivable lands in the estate of the plaintiff, and had been held by the defendants for the purpose of agriculture under a *muchilika*, which will be presently referred to, and were not old waste lands.

It was enacted by Madras Act I of 1908 as follows :—

" 6. (1) Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land not being old waste situated in the estate of such landholder shall have a permanent right of occupancy in his holding; but nothing contained in this sub-section shall affect any permanent right of occupancy that may have been acquired in land which was old waste before the commencement of this Act. . . ."

To sub-section (i) of section 6 was added by Madras Act IV of 1909 the following explanation :—

" *Explanation.*—For the purpose of this sub-section, the expression 'every ryot now in possession' shall include every person who, having held land as a ryot, continues in possession of such land at the commencement of this Act."

Section 185 of Madras Act I of 1908 is as follows :—

" 185. When in any suit or proceeding it becomes necessary to determine whether any land is the landholder's private land, regard shall be had to local custom and to the question whether the land was before the first day of July, 1898, specifically let as private land and to any other evidence that may be produced, but the land shall be presumed not to be private land until the contrary is shown. Provided that all land which is proved to have been cultivated as private land by the landholder himself by his own servants or by hired labour with his own or hired stock for twelve years immediately before the commencement of this Act, shall be deemed to be the landholder's private land."

Madras Act I of 1908 received the assent of the Governor of Madras on the 25th March, 1908, and the assent of the Governor-General on the 28th June, 1908.

The plaintiff endeavoured to prove that by custom the lands in question were his private lands. He failed to prove any such custom. In a *muchilika* of the 28th July, 1907, which the defendants or some of them gave to the plaintiff, and under which they agreed to hold the lands as his tenants until the 30th April,

1908, the lands were described as "your *Diwanam Kamatam* (Private) lands." Clause 8 of that *muchilika* is as follows :—

> "8. As we have no manner of right and title to the said lands, neither we nor our heirs shall raise any objection to your leasing out the lands according to your pleasure at the expiration of the term, that is, after 30th April, 1908, without the need for a fresh relinquishment from us or any notice from your sircar at the close of the period of this *khat* (*muchilika*), considering this itself as a relinquishment and as a notice."

At the trial of the suit there was a conflict of evidence as to whether the lands were the private lands of the plaintiff or were ryoti lands, and the evidence which was produced was fully and carefully considered by the trial Judge, who found that the plaintiff had failed to prove that the lands had been cultivated and dealt with as private lands by the plaintiff and his predecessors in title. The trial Judge found that the lands were ryoti lands, and by his decree dismissed the suit.

From that decree dismissing the suit the plaintiff appealed to the High Court at Madras. The appeal was heard by the Chief Justice and Mr. Justice Seshagiri Aiyar, who agreed with the finding on the evidence of the trial Judge. The learned Chief Justice in his judgment said :—

> "The Subordinate Judge has found and I agree with him that the suit lands were never cultivated by the Zemindar as part of his home farm lands, and it seems to me that his treatment of them as kambattam was merely colourable for the purpose of defeating the occupancy rights of the tenants. In some parts of India lands of this kind are known as *sir* lands, and this is one of the terms mentioned in the definition. In *Budley* v. *Bukhtoo*, 3 N.W.P. 203, it was held that *sir* land is land which a Zemindar has cultivated himself and intends to retain as resumable for cultivation by himself even when from time to time he demises it for a season. I think that this test may well be applied here, and that, as the plaintiff has failed to satisfy it, the appeal fails and must be dismissed with costs."

That test is obviously suggested by section 185 of the Act, and was rightly applied by the Chief Justice. Mr. Justice Seshagiri Aiyar in his judgment stated that "I see no reason to differ from the conclusion at which the Lower Court has arrived." The High Court by its decree affirmed the decree of the Subordinate Judge and dismissed the appeal. From that decree of the High Court the plaintiff has brought this appeal.

The concurrent findings of fact as to the lands being ryoti lands must be accepted as binding on the appellant. But it is contended that after the 30th April, 1908, when their term expired, the defendants were trespassers on the lands, and continued to be and were trespassers when Madras Act I of 1908 was passed and came into force, and that the explanation to subsection (i) of section 6 of Madras Act I of 1908, which was added by Madras Act IV of 1909, does not apply to a person whose continued possession of ryoti land is that of a trespasser, and applies only when the person continuing in possession does so with the consent of the landholder, which as a fact was not

the case here. As a fact, the defendants continued in possession of the *ryoti* lands in suit after the 30th April, 1908, not only without the consent of the plaintiff, but contrary to his wishes and expressed intentions, and contrary to the terms of clause 8 of the *muchilika* of the 28th July, 1907. The appellant's contention as to the effect of the explanation to subsection (i) of section 6 is, in the opinion of their Lordships, unsound and untenable. The defendants had held the lands from the 28th July, 1907, until the 30th April, 1908, for the purpose of agriculture on condition of paying to the plaintiff, the landholder, the rent legally due upon the lands. The lands were *ryoti* lands, as has been found by each Court below, and the defendants were, in fact, continuing in possession of the land at the commencement of Madras Act I of 1908, although such continuing in possession was without the consent and was contrary to the wishes of the plaintiff. The construction of subsection (i) of section 6 of Madras Act I of 1908 as amended by section 3 of Madras Act IV of 1909 is too plain for argument. Assuming that the defendants had not any permanent right of occupancy in the lands in question before the commencement of Madras Act I of 1908, they obtained a permanent right of occupancy in the holding by the operation of section 6 subsection (i) as amended by section 3 of Madras Act IV of 1909, and the suit was rightly dismissed by the Civil Court.

The effect of section 6 subsection (i) of Madras Act I of 1908, as amended by section 3 of Madras Act IV of 1909, came before the High Court of Madras in *Govinda Parama Guruvu* v. *Bothasi Dandasi Pradhanu and others*, 20 Madras L.J.R. 528, in 1910. In that case the landlord had before the 1st July, 1908, obtained a decree for possession of ryoti land against the occupiers who were in possession on the 1st July, 1908, and Benson and Sankaran Nair, JJ., rightly held that :—

> " It is immaterial that a decree for possession had been already passed. We must, therefore, hold that the defendants are ryots with a permanent right of occupancy."

See also *G. Kanakayya* v. *Janardhana Padhi and others*, 36 *Mad.* 439.

This appeal fails. Their Lordships will humbly advise His Majesty that this appeal should be dismissed. As the respondents have not appeared there will be no order as to the costs of this appeal.

In the Privy Council.

SREEMANTHU RAJA YERLAGADDA MALLIK-HARJUNA PRASAD NAYUDU BAHADUR ZAMINDAR GARU

v.

RAJULAPATI SOMAYA AND OTHERS.

DELIVERED BY SIR JOHN EDGE.

Printed by Harrison & Sons, St. Martin's Lane, W.C.

1918.