Privy Council Appeal No. 1 of 1947

Sri Raja Yarlagadda Siva Rama Prasad Bahadur - - - *Appellant*

v.

Majeti Potharaju and others - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH JANUARY, 1949

Present at the Hearing:
LORD OAKSEY
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT
[*Delivered by* SIR MADHAVAN NAIR]

This is an appeal by special leave from a judgment and decree of the High Court of Judicature at Madras dated 12th September, 1944, which set aside the judgment and decree of the District Court of Kistna at Chilakalapudi, which affirmed the judgment and decree of the Court of the Deputy Collector, Bandar.

The defendant is the appellant before the Board, and the plaintiffs are the respondents. The latter do not appear before the Board, but Mr. Pringle the learned counsel for the appellant has stated all the necessary facts fully and fairly.

The appellant and the respondents will hereinafter be referred to as the defendant and the plaintiffs respectively.

The appeal arises out of a suit instituted by the three plaintiffs under section 55 of the Madras Estates Land Act (I of 1908) to compel the defendant to issue a " patta " to them in respect of about 35 acres 86 cents of land comprised in survey Nos. 205 and 63. The plaintiffs belong to a village situated in the estate of the defendant, the Zamindar of Devarakota. Section 55 of the Madras Estates Land Act runs as follows:

> " When a landholder for three months after demand fails to grant a patta in such terms as the ryot is entitled to receive, it shall be lawful for a ryot to sue for such a patta before the Collector."

Before a ryot can claim relief under section 55 of the Act he has to show that the relationship of landholder and ryot subsists when he claims the relief. The question for decision in this appeal is whether the plaintiffs have been able to establish that relationship between them and the defendant i.e. whether they own the right of permanent occupancy in the land or not.

The claim of the plaintiffs was based on the ground that the land was held by their ancestors as ryoti-land, that they were the occupancy tenants thereof, that over 30 years ago the tank which was feeding this land became

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breached and silted, that consequently the land became unfit for cultivation, and that recently owing to the excavation of what is known as the East Bank Canal, the lands became fit for cultivation. In the circumstances, they contended that their right to cultivate the lands as ryots of the defendant's estate continues and that he should therefore be compelled to execute a " patta " in their favour.

In his written statement the defendant stated that " neither the plaintiffs nor their ancestors have any kind of right " to the land. He alleged that owing to collusion between an ancestor of the plaintiffs and the then " karnam ", certain fraudulent entries were made in the Survey Registers of 1890, and that the entries were not binding on him. He also stated that owing to the construction of the flood bank to the river Kistna, the tank feeding the land became silted and " unfit for cultivation " and " so the said entire land being kept by the estate as pasture *beedu* was not only being used for grazing their own cattle but were also being enjoyed by leasing them out on pasture tax to others also ".

The issues framed in the suit were: —

(1) Whether the plaintiffs are entitled to obtain a patta for the suit lands and if so, on what terms?

(2) To what relief?

The trial court dismissed the suit on the ground that the relationship of landlord and tenant between the parties in respect of the suit land was not made out and that the suit land could not be localised.

On appeal, the learned District Judge held that the plaintiffs' ancestors were the ryots of about 37 acres of land which the plaintiffs claimed in the suit ; but he held that the plaintiffs' ancestors must be deemed to have abandoned their right to the land, and on that ground dismissed the appeal. He found as a fact that " some time between 1890 and 1900 the land ceased to be cultivated on account of the breach of the tank, and consequently that the lands remained uncultivated since then ". It may be mentioned here that it is the duty of the Zamindar to keep the irrigation tanks in good repair. As regards his duty in this matter, in *Gajapathi Krishna Chandra Deo v. Rajah of Vizianagram* (60 Mad. L.J. p. 662) Kumaraswami Sastri J. quoted the following passage from the decision of the Privy Council in *Madras Railway Company v. Zamindar of Carvatenagarum* (1874 1 I.A. p. 364): —

> " The public duty of maintaining existing tanks, and of constructing new ones in many places, was originally undertaken by the Government of India, and upon the settlement of the country has, in many instances, devolved on Zamindars of whom the Defendant is one. The Zamindars have no power to do away with these tanks, in the maintenance of which large numbers of people are interested, but are charged under India Law, by reason of their tenure, with the duty of preserving and repairing them." His Lordship also observed at page 669: —" Under the Madras Estates Land Act the tenants can compel a landlord to repair a tank which is the source of irrigation by a proper application to the Collector ".

The exact finding of the learned judge in the present case was as follows:

> " The inference from these facts is that the Plaintiffs' ancestors did not want to have the land when it ceased to be useful for cultivation because they did not want to pay kist to Zamindar and that the Zamindar has been in possession of it since then, i.e. since before 1900, letting it out for pasture and that after the excavation of the east bank canal he let out a portion of the block on pattas and cultivated the remaining lands. In these circumstances the proper inference is that the Plaintiffs and their ancestors abandoned the land. Consequently there is no subsisting relationship now of landlord and tenant between the Zamindar and the Plaintiffs."

The learned judge of the High Court who heard the appeal from the District Judge's decision pointed out that there was no plea in the written statement that the plaintiffs or their ancestors if they had the rights claimed ever abandoned them, there was no issue about it, that no witnesses spoke about it and that it was not possible for him to uphold the finding of the District Judge that the plaintiffs' ancestors had abandoned their interest in the land. The learned advocate for the defendant Zamindar pointed out that his real case was that "the plaintiffs' rights became extinguished by adverse possession on the part of the defendant". The learned judge remanded the case to the District Judge to submit findings on the questions of adverse possession and on some other questions (the nature of which appears sufficiently from the questions themselves) none of which is of any vital importance (for the purposes of this appeal) having regard to the line of argument pursued by the learned counsel for the appellant. Findings were called for on the following questions:—

(1) Whether the defendant has proved that the plaintiffs' right became extinguished by reason of adverse possession on his part for over the statutory period?

(2) Whether it is not open to the plaintiffs to claim a patta for the whole extent by reason of the fact that there were other persons shown in Exhibit A as joint pattadars?

(3) What is the correct extent of the land held by the four persons or their ancestors and what is the extent to which the plaintiffs would be entitled in any event?

On the question of adverse possession, the learned judge observed that one question which the lower court would have to consider was "whether the defendant who is under the legal duty to maintain the irrigation work in good repair and who neglects his duty for whatever reason it might be, can claim a right by adverse possession as against the ryot in respect of the lands which are left uncultivated owing to his default".

On all the questions findings were recorded in favour of the plaintiffs. The learned District Judge accepted the evidence relating to the plaintiffs' title to the land. In the course of his discussion of the question of adverse possession, which he examined from the standpoint indicated by the High Court, he observed "It . . . follows that even on the assumption that the Zamindar had in some years let out this land as pasture ground, it does not necessarily follow that he exercised title adverse to the owner especially in view of the circumstance that the land was lying fallow or waste unfit either for wet or for dry cultivation." Finally, he recorded his finding "that defendant has miserably failed to prove that plaintiffs' right has become extinguished by reason of adverse possession". Objections taken to the findings were overruled by the learned judge. He accepted the findings and held that the plantiffs were entitled to a "patta" for the land. Later, the amount to be paid as rent was fixed after enquiry by the Deputy Collector, and the High Court finally passed a decree "directing the defendant landholder to issue a patta in accordance with the findings for the area found at the rate of rupee one per acre".

Before the Board Mr. Pringle argued that (1) in view of the facts of the case the plaintiffs have failed to establish affirmatively that they have subsisting and continuing occupancy rights in the suit land because between 1890 and 1908, when the Madras Estates Land Act was passed, the land remained uncultivated, and that (2) the proved facts show conclusively that they or their ancestors had abandoned the land. It may be mentioned here that on the question of adverse possession on which a "finding" against the defendant was submitted by the District Judge, the learned counsel stated that he was prepared to admit that, if there was proof of a clear continuing title in the plaintiffs, acts of the defendant while the land was temporarily out of cultivation would not disturb the plaintiffs' title. In this connection their Lordships may also observe that the other "findings" submitted by the District Judge are plainly questions of fact and cannot be gone into before the Board.

Before dealing with the arguments addressed by the learned counsel it will be advantageous to summarise the facts which appear from the evidence. The defendant is the Zamindar of Devarakota. The land claimed by the plaintiff lies within the ambit of the Zamindari—a permanently settled estate. The documentary evidence shows that their ancesters were registered in public records as owners of the land and that grain used to be delivered by the plaintiffs' ancestors to the Zamindar. Sometime between 1890 and 1900 the land ceased to be cultivated on account of the breach of the tank feeding the land and consequently the " lands remained uncultivated since then ". " It is common case and it is admitted in the written statement in express terms that the lands became unfit for cultivation whether as wet or dry " (see the judgment of the High Court). This fact is also expressly admitted by the defendant's witnesses. The ryots who were cultivating the lands under the tank were unable to do so owing to the fact that the tank became breached and the defendant, who was under a legal duty to keep it in good condition, would not repair it.

Exhibit I series are " pattas given to the plaintiffs from 1900 onwards ; they contain certain dry lands, but not the suit lands ". The suit lands ceased to be included in the pattas since before 1900. The plaintiffs stated that this was due to the fact that the land ceased to be cultivated. Exhibit II series show that 400 acres out of the mamul wet lands had been leased out for pasturage, but the suit land is not included in the lands leased out under exhibit II. There is no reliable evidence that the land was used by the Zamindar for the pasturage of his own cattle ; nor is there any evidence of any act of actual dispossession by the Zamindar. During the long period that the land lay fallow and unfit for cultivation, admittedly no rent was demanded by the Zamindar, and no rent has been paid by the ryot. The Courts have found that the plaintiffs' rights have not been extinguished by adverse possession by the Zamindar.

Mr. Pringle's first contention that the plaintiffs have failed to establish affirmatively that they had at the relevant date rights of occupancy in the suit land has reference to the finding that " between 1890 and 1900 the land ceased to be cultivated on account of the breach of the tank and consequently the land remained uncultivatd since then ". The title of the plaintiffs to the suit land has been established, and it has been shown that their ancestors used to cultivate it before 1890, but that cultivation ceased between 1890 and 1900 owing to the Zamindar's default in repairing the tank. Since then the land remained uncultivated. It has not been proved that anyone has actually dispossessed them of the land. With a view to putting an end to the disputes between landlords and their tenants in possession of land regarding their respective rights, the Madras Legislature passed the Madras Estates Land Act (I of 1908) in 1908. Section 6 (1) of the Act enacts that " 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 . . . .". Explanation (1) of the section says " For the purposes 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 ". Prima facie by virtue of the provisions of the Act the plaintiffs must be held to have acquired rights of occupancy in the suit land when the Act came into force.

The learned counsel argues that the above presumption in favour of the plaintiffs' occupancy rights is inapplicable in the present case, because the land is not " ryoti " land inasmuch as it remained uncultivated since 1890 onwards, and in the circumstances the burden was on the plaintiffs to prove affirmatively that their occupancy rights still continued to subsist

Section 3 clauses (15) and (16) define " ryot " and " ryoti land " respectively :—

" ' 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."

" ' Ryoti land ' means cultivable land in an estate other than private land . . . ."

Shortly stated, the learned counsel's argument amounts to this, namely, that this definition does not apply in view of the fact that the land remained uncultivated at the time when the Act was passed.

Without expressing any opinion about the soundness or otherwise of this argument, their Lordships think that it is not necessary to pursue it further, as in their opinion the defendant should not be permitted to raise this question now for the first time before the Board. At no stage of the case was this argument ever put forward by the defendant. No reference to it is to be found in the pleadings or in the judgments of the courts in India, nor has it been raised in the Petition to the Board asking for special leave. The case of the defendant so far has been that the plaintiffs have no title to the land, and if they had any title they have abandoned it or lost it by adverse possession. That the land has not been proved to be " ryoti land " in the sense now indicated has not been put forward as a specific ground of complaint in any of the proceedings thus far taken by the defendant. Their Lordships are of opinion that in a case brought before the Board after obtaining special leave the defendant should not be permitted to travel beyond the specific grounds on which special leave was granted to him by the Board. Their Lordships would therefore disallow this argument.

The second argument relates to the question whether the plaintiffs may be said to have abandoned their rights to the suit land. As already stated this question was decided against them by the District Judge who first heard the case on appeal. Examining the facts found by the courts in India their Lordships are not prepared to hold that the evidence shows that the plaintiffs have abandoned their rights. Whether there has been an abandonment or not is an inference to be gathered from the facts of the case. " Abandonment " implies an intention to abandon which is clearly absent in this case. The plaintiffs allowed the land to remain uncultivated because the defendant who was under a legal duty to repair the tank failed to keep it in good repair and for no other reason. It is true that the land was not included in the patta, because if they insisted on showing it in their pattas they would be asked to pay rent for it. As the land remained fallow they naturally did not desire to pay any rent and so did not ask for its inclusion in the patta. Section 4 of the Estates Land Act says: " Subject to the provisions of this Act, a landholder is entitled to collect rent in respect of all ryoti land in the occupation of a ryot." The defendant could have demanded payment of the rent, but he never made any demand. It is specifically stated in the findings submitted by the District Judge. " Admittedly, no rent was demanded during the long period by the Zamindar and no rent has been paid by the ryot." The suit land was never dealt with by the Zamindar in a manner which showed that he intended to resume it or exercise control over it. The situation in which the land was allowed to lay fallow was brought about by his neglect in discharging his legal obligation and by no act on the part of the plaintiffs. When the land became fit for cultivation, they intended to cultivate it and applied for patta. In the circumstances, their Lordships are unable to draw an inference from the facts that the plaintiffs have abandoned their rights to the suit land. The plea for abandonment therefore fails.

For the above reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed.

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